



Queensland

Mental Health Bill 2015



Queensland

Mental Health Bill 2015

Contents

		Page
Chapter 1	Preliminary	
Part 1	Introduction	
1	Short title	42
2	Commencement	42
3	Main objects of Act	42
4	Act binds all persons	43
Part 2	Principles for administration of Act	
5	Principles for persons with mental illness	43
6	Principles for victims and others	46
7	Regard to principles	47
8	Application to person with intellectual disability	47
Part 3	Interpretation	
9	Definitions	48
10	Meaning of mental illness	48
11	Meaning of involuntary patient	49
12	Meaning of treatment criteria	50
13	Meaning of less restrictive way	50
14	Meaning of capacity to consent to be treated	52
15	Responsibility for involuntary patient or forensic disability client	53
16	Purpose of limited community treatment	53
Part 4	Overview of Act	
17	Purpose of pt 4	53
18	Treatment authorities	53
19	Persons in custody	54
20	Psychiatrist reports	54
21	Mental Health Court	55
22	Magistrates Courts	55

Contents

23	Treatment and care of patients	56
24	Mechanical restraint, seclusion, physical restraint and other practices	57
25	Rights of patients	57
26	Chief psychiatrist	57
27	Information notices	58
28	Mental Health Review Tribunal	58
29	Appeals	58
Chapter 2	Making of treatment authorities after examination and assessment	
Part 1	Preliminary	
30	Purpose of ch 2	59
Part 2	Examinations and recommendations for assessment	
Division 1	Examinations generally	
31	Examination	60
Division 2	Powers under examination authorities	
32	Powers of doctor or authorised mental health practitioner	61
33	Reasonable help and force to exercise powers	61
34	Asking police officer for help.	62
35	Action before exercising powers	62
Division 3	Detention of particular persons to make recommendation for assessment	
36	Powers of doctor or authorised mental health practitioner	63
37	Reasonable help and force to exercise powers	63
38	Action before exercising powers	64
Division 4	Recommendations for assessment	
39	Making recommendation for assessment.	64
40	Notice of making.	65
41	Duration	65
42	Revocation	65
Part 3	Assessments	
43	Making assessment	66
44	Where and how person may be assessed	66
45	Detention for assessment.	67
46	Start of assessment period to be noted	68
47	Explaining decision not to make treatment authority	68

Part 4	Treatment authorities	
48	Application of pt 4	69
49	Making treatment authority	69
50	Form of treatment authority	69
51	Category	70
52	Limited community treatment	71
53	Nature and extent of treatment and care	71
54	When advance health directive not followed	72
55	Notice of making	72
56	Review of treatment authority if not made by psychiatrist	73
57	Decision on review	74
58	Notice about review	76
59	Date for first assessment	76
60	Relationship with forensic order (disability)	76
Chapter 3	Persons in custody	
Part 1	Preliminary	
61	Purpose of ch 3	77
62	Definitions for ch 3	77
63	Meaning of person in custody	78
64	Meaning of classified patient	78
Part 2	Transport of persons in custody to authorised mental health services	
65	Transport for assessment	80
66	Transport for treatment and care under treatment authority or particular orders	80
67	Transport for treatment and care by consent	81
68	Transfer recommendation	82
69	Administrator consent	83
70	Prior approval of chief psychiatrist for transport of minor to high security unit	84
71	Custodian consent	85
72	Notice to chief psychiatrist if person in custody not transported within 72 hours	86
73	Chief psychiatrist consent for transport	86
Part 3	Persons in custody remaining in authorised mental health services	
74	Person subject to examination order or court examination order remaining in authorised mental health service	87

Contents

Part 4	Requirements applying when person in custody becomes classified patient	
75	Notice and explanation to person in custody who becomes classified patient.	90
76	Notice to chief psychiatrist of person in custody becoming classified patient.	91
77	Notice to tribunal of minor in custody becoming classified patient in high security unit	91
78	Examination of classified patient under s 201	91
79	Classified patient (involuntary) may become classified patient (voluntary)	91
80	Notice to chief psychiatrist if classified patient (voluntary) withdraws consent.	93
Part 5	Return to custody, or release from detention in authorised mental health service, of classified patient	
81	Notice to chief psychiatrist of notice event	93
82	Chief psychiatrist may decide to return classified patient to place of custody	94
83	Return of classified patient to custody	95
84	Person stops being classified patient if Mental Health Court makes decision on reference	97
85	Release of classified patient.	97
Chapter 4	Psychiatrist reports for serious offences	
Part 1	Preliminary	
86	Purpose of ch 4	98
87	Definitions for ch 4	98
Part 2	Psychiatrist report on request	
88	Application of pt 2.	99
89	Administrator must explain effect of request.	99
90	Request for psychiatrist report	100
91	Direction to prepare psychiatrist report	100
Part 3	Psychiatrist report on chief psychiatrist’s own initiative	
92	Application of pt 3.	101
93	Direction to prepare psychiatrist report	101
94	Notice of direction.	102
Part 4	Preparation of psychiatrist reports	
95	Authorised psychiatrist must prepare psychiatrist report	103
96	Information from prosecuting authority.	104
97	Support person.	106

98	Person must participate in examination in good faith—report on request 106	
99	Person must attend examination—report on chief psychiatrist's initiative 107	
100	Second psychiatrist report	108
Part 5	References by chief psychiatrist	
101	Reference by chief psychiatrist to Mental Health Court	108
Part 6	Miscellaneous	
102	Copies of reports	110
103	Chapter stops applying to person if prosecution for offence discontinued 111	
104	Application of chapter to person with intellectual disability.	111
Chapter 5	Mental Health Court references	
Part 1	Preliminary	
105	Purpose of ch 5	113
106	Definitions for ch 5	113
107	Meaning of associated offence.	114
108	Meaning of diminished responsibility	114
109	Meaning of unsound mind	114
Part 2	Making of references by particular persons	
110	When reference may be made	115
111	How reference is made.	116
Part 3	Proceedings for references	
Division 1	Preliminary	
112	Application of pt 3.	117
Division 2	Notice requirements etc.	
113	Notice of reference	117
114	Parties to proceeding	118
115	Notice of hearing	118
Division 3	Particular decisions	
116	Decision about unsoundness of mind and diminished responsibility	119
117	Substantial dispute about whether person committed offence . . .	120
118	Decision about fitness for trial	120
Division 4	Procedural provisions	
119	Unsound mind—discontinuance of proceeding	121
120	Diminished responsibility—discontinuance of proceeding	122
121	Temporary unfitness for trial—stay of proceeding	122

Contents

122	Permanent unfitness for trial—discontinuance of proceeding . . .	122
123	Fit for trial—continuation of proceeding	123
124	Related orders if person fit for trial	123
Division 5	Withdrawal of particular references	
125	Application of div 5	124
126	Application to withdraw reference.	124
127	Notices if application to withdraw filed	125
128	Decision on application	125
Part 4	Forensic orders and treatment support orders	
Division 1	Preliminary	
129	Definition for pt 4	126
130	Explanation about operation of forensic orders and treatment support orders	126
131	Orders if unsound mind or permanent unfitness for trial	127
132	Orders if temporary unfitness for trial.	127
133	Matters to which Mental Health Court must have regard	128
Division 2	Forensic orders	
Subdivision 1	Making of forensic orders	
134	Requirements for making forensic order	128
135	Conditions	129
136	Recommendations about intervention programs	130
137	Non-revocation period	130
Subdivision 2	Treatment in the community	
138	Mental Health Court to decide category.	131
139	Inpatient category.	131
140	Community category	132
Subdivision 3	Other provisions	
141	When category of forensic order (disability) may be described as residential.	133
142	Admission to high security unit—stay of order	133
Division 3	Treatment support orders	
Subdivision 1	Making of treatment support orders	
143	Requirements for making treatment support order.	134
144	Conditions	135
Subdivision 2	Treatment in the community	
145	Mental Health Court to decide category and community treatment	135

Division 4	Responsibility for treatment and care	
146	Responsibility for person subject to forensic order (mental health) or treatment support order	136
147	Responsibility for person subject to forensic order (disability) . . .	137
148	Certificate of forensic disability service availability	138
Division 5	Transport	
149	Transport to authorised mental health service	138
150	Transport to forensic disability service	139
Division 6	Other provisions	
151	Matters authorised by forensic order (mental health) or treatment support order	139
152	Matters authorised by forensic orders (disability)	140
153	Status of forensic order or treatment support order if amended. .	141
154	Ending of order made because of temporary unfitness for trial . .	141
Part 5	Other provisions	
Division 1	Notice of decisions and orders	
155	Notice of decisions and orders	142
Division 2	Admissibility and use of evidence	
156	Definition for div 2.	142
157	Admissibility of expert's report at trial.	143
158	Particular statements not admissible	143
159	Issue of mental condition may be raised at trial	143
160	Other use of expert's report	144
Division 3	Victim impact statements	
161	Application of div 3	144
162	Preparation of victim impact statement	145
163	Production of victim impact statement by prosecuting authority .	145
164	Restrictions on disclosing victim impact statement	145
165	Use of victim impact statement by Mental Health Court.	146
Division 4	Persons subject to existing orders or authorities	
166	Person subject to existing forensic order	147
167	Person subject to existing treatment authority or treatment support order 147	
Division 5	Miscellaneous	
168	Relationship with ch 16, pt 1	148

Contents

Chapter 6	Powers of courts hearing criminal proceedings and related processes	
Part 1	Preliminary	
169	Purpose of ch 6	148
170	Childrens Court	149
Part 2	Magistrates Courts	
Division 1	General	
171	Definition for div 1	149
172	Power to dismiss complaint—unsound mind or unfitness for trial	149
173	Power to adjourn hearing of complaint—temporary unfitness for trial	150
174	Power to refer person to appropriate agency or entity	150
Division 2	References to Mental Health Court	
175	When reference may be made	151
176	How reference is made	152
Division 3	Examination orders	
177	Power to make examination order for person charged with simple offence	152
178	Examination of person	154
179	Examination report	155
180	Admissibility of examination report	156
Part 3	Supreme Court and District Court	
Division 1	Making reference to Mental Health Court if person pleads guilty to indictable offence	
181	Application of div 1	156
182	Power to order plea of not guilty	157
183	Power to make reference to Mental Health Court and related orders	157
184	How reference to Mental Health Court is made	158
185	Persons who may give agreement for detention	159
186	Agreement for detention—administrator	159
187	Agreement for detention—chief psychiatrist	160
188	Effect of order for detention	160
Division 2	Forensic orders (Criminal Code)	
189	Application of div 2	160
190	Registrar of court to give notice of order	161
191	Power to transport person to authorised mental health service . .	162
Part 4	Detention in authorised mental health service during trial	
192	Definition for pt 4	162

193	Power to order person's detention in authorised mental health service 162	
194	Persons who may give agreement for detention.	163
195	Agreement for detention—administrator.	163
196	Agreement for detention—chief psychiatrist.	164
197	Effect of order for detention	164
Chapter 7	Treatment and care of patients	
Part 1	Preliminary	
198	Purpose of ch 7	165
199	Relationship between this Act and custodial status of particular patients 166	
Part 2	Responsibility to provide treatment and care	
200	Application of pt 2.	166
201	Examination of patient for purpose of providing treatment and care	167
202	Authorised doctor's responsibilities for treatment and care	168
203	Administrator's responsibilities for treatment and care	168
Part 3	Patients subject to treatment authorities	
Division 1	Preliminary	
204	Application of pt 3.	169
Division 2	Regular assessment	
205	Authorised doctor must assess patient.	169
Division 3	Actions that may be taken after assessment	
206	Authorised doctor may revoke treatment authority.	170
207	Authorised psychiatrist may revoke treatment authority if patient missing 171	
208	Chief psychiatrist may revoke treatment authority	171
209	Amendment of treatment authority to change category, limited community treatment or conditions	172
210	Amendment of treatment authority to change category to inpatient	173
Part 4	Patients subject to forensic orders	
211	Application of pt 4.	174
212	Amendment of forensic order (mental health) or forensic order (disability) to change category, limited community treatment or conditions	175
213	Amendment of forensic order to change category to inpatient. . .	176
214	Limited community treatment for patient subject to forensic order (Criminal Code)	177

Contents

Part 5	Patients subject to treatment support orders	
215	Application of pt 5	178
216	Amendment of treatment support order to change category, limited community treatment or conditions	178
217	Amendment of treatment support order to change category to inpatient 179	
Part 6	Classified patients and patients subject to judicial orders	
218	Application of pt 6	181
219	Authorisation of limited community treatment.	181
Part 7	Obligations in relation to treatment in the community	
220	Patient’s obligations to be recorded and explained	182
221	Chief psychiatrist may approve temporary absence.	183
Part 8	Advance health directives, nominated support persons and records system	
Division 1	Advance health directives	
222	Advance health directive may include views about treatment and care 184	
Division 2	Nominated support persons	
223	Who is a nominated support person	185
224	Functions of nominated support person.	186
Division 3	Records system	
225	Chief psychiatrist to maintain records system	186
226	Request to keep record	187
227	Requirement to give notice—matters relating to advance health directive 188	
228	Requirement to give notice—revocation of appointment of nominated support person	188
229	Requirement to give notice—resignation of nominated support person 189	
230	Copy in records system is proof	189
Part 9	Regulated treatment	
Division 1	Preliminary	
231	Meaning of regulated treatment	190
Division 2	Informed consent	
232	Requirements for informed consent	190
233	Explanation to be given	191
Division 3	Electroconvulsive therapy	
234	Offence to perform electroconvulsive therapy	191

235	Performance of electroconvulsive therapy with consent or tribunal approval	191
236	Performance of electroconvulsive therapy in emergency	192
Division 4	Non-ablative neurosurgical procedures	
237	Offence to perform non-ablative neurosurgical procedure	193
238	Performance of non-ablative neurosurgical procedure with consent and tribunal approval	193
Part 10	Prohibited treatment	
239	Particular therapies prohibited	194
240	Psychosurgery prohibited	194
Chapter 8	Use of mechanical restraint, seclusion, physical restraint and other practices	
Part 1	Preliminary	
241	Purpose of ch 8	195
242	Definitions for ch 8	195
Part 2	Mechanical restraint	
Division 1	Preliminary	
243	Meaning of mechanical restraint	196
244	Offence	197
Division 2	Authorised mechanical restraint	
245	Requirements for use of mechanical restraint on relevant patients	197
246	Application for chief psychiatrist's approval	198
247	Chief psychiatrist may require amendment of application to include reduction and elimination plan	199
248	Chief psychiatrist may approve authorisation of use of mechanical restraint	199
249	Authorisation of use of mechanical restraint by authorised doctor	200
250	Duties of health practitioner in charge of unit	201
251	Removal of mechanical restraint before authorisation ends	202
252	Reuse of mechanical restraint	203
Part 3	Seclusion	
Division 1	Preliminary	
253	Meaning of seclusion	203
254	Offence	204
Division 2	Authorised seclusion	
255	Requirements for seclusion of relevant patients	204
256	Chief psychiatrist may give written direction about seclusion	205

Contents

257	Authorisation of seclusion by authorised doctor	205
258	Extension of period of seclusion.	207
259	Duties of health practitioner in charge of unit.	208
260	Removal from seclusion before authorisation ends	209
261	Return to seclusion after removal.	209
Division 3	Emergency seclusion	
262	Requirements for emergency seclusion by health practitioner in charge of unit	210
Part 4	Reduction and elimination plans	
263	What is a reduction and elimination plan	211
264	Content of plan	212
265	Application for chief psychiatrist's approval of plan	212
266	Chief psychiatrist may approve plan.	212
Part 5	Physical restraint and clinical need for medication	
Division 1	Physical restraint	
267	Meaning of physical restraint	213
268	Offence	213
269	Requirements for use of physical restraint	214
Division 2	Clinical need for medication	
270	Meaning of medication	214
271	Offence	214
Part 6	Policies 215	
272	Chief psychiatrist must make policy	215
Chapter 9	Rights of patients and others	
Part 1	Preliminary	
273	Purpose of ch 9	215
274	Definition for ch 9	216
Part 2	Statement of rights	
275	Preparing statement of rights	217
276	Giving statement of rights to patients and others.	217
277	Display of signs	217
Part 3	Rights of patients	
278	Definition for pt 3	218
279	Visits by nominated support persons, family, carers and other support persons.	218
280	Visits by health practitioners.	218

281	Visits by legal or other advisers	219
282	Communication with others	219
283	Information about treatment and care	220
284	Understanding of oral information	220
285	Written notices to be given to nominated support persons and others 222	
286	Communication about patient with others	223
287	Disclosure of confidential information under Hospital and Health Boards Act not limited.	224
288	Second opinion about treatment and care	225
Part 4	Roles and responsibilities of nominated support persons, family, carers and other support persons	
289	Roles	225
290	Responsibilities	226
Part 5	Independent patient rights advisers	
291	Appointment	226
292	Functions	227
293	Independence.	228
Chapter 10	Chief psychiatrist	
Part 1	Preliminary	
294	Purpose of ch 10	228
295	Definition for ch 10	229
Part 2	Appointment, functions and powers	
296	Appointment	229
297	Resignation	230
298	Termination of appointment	230
299	Functions and powers	230
300	Independence of chief psychiatrist	231
301	Delegation	231
302	Power to require administrator to give documents or information	232
Part 3	Policies, practice guidelines and annual report	
303	Making policies or practice guidelines	233
304	Publication of policies and practice guidelines	236
305	Annual report	236
Part 4	Investigations	
306	Chief psychiatrist may investigate	238
307	Investigation report	238

Contents

308	Recommendations for improvement.	239
Part 5	Serious risks to persons or public safety	
309	Purpose of pt 5.	240
310	Minister may direct chief psychiatrist to review matter	240
311	Actions chief psychiatrist may take.	241
312	Chief psychiatrist's order	242
313	Chief psychiatrist may vary period or end order.	243
Part 6	Information notices	
Division 1	Preliminary	
314	Purpose of pt 6.	244
315	Definitions for pt 6.	244
Division 2	Application, amendment and revocation	
316	Application	245
317	Decision on application	246
318	Right to receive information under notice	247
319	Amendment of notice to change applicant's nominee	248
320	Mandatory revocation.	249
321	Discretionary revocation.	251
Division 3	Miscellaneous	
322	Tribunal must give particular information to chief psychiatrist about relevant patient.	252
323	Telling relevant patient about information notice	252
324	Misuse of information made available under an information notice	253
325	Application of part to forensic disability client.	253
Chapter 11	Authorised mental health services	
Part 1	Preliminary	
326	Purpose of ch 11	254
Part 2	Declaration of authorised mental health services	
327	Declaration of authorised mental health service	255
328	Declaration of high security unit	255
329	Declaration of authorised mental health service (rural and remote)	255
Part 3	Administrators of authorised mental health services	
330	Appointment	256
331	Functions	256
332	Powers	256

333	Register of authorised doctors and authorised mental health practitioners	257
334	Record of relevant patients	257
335	Delegation	258
Part 4	Authorised doctors and authorised mental health practitioners	
Division 1	Appointment, functions and powers	
336	Appointment of authorised doctor	258
337	When administrator is authorised doctor	258
338	Appointment of authorised mental health practitioner	259
339	Appointment of health practitioner to perform particular functions of authorised doctor	259
340	Appointment conditions and limit on powers	259
341	When office ends	260
342	Functions and powers	261
343	Requirement to give notice of particular decisions	262
Division 2	Identity cards	
344	Issue of identity card	262
345	Production or display of identity card	263
346	Return of identity card	263
Part 5	Transfer of patients	
Division 1	Preliminary	
347	Purpose of pt 5	263
348	Definition for pt 5	264
Division 2	Authorised mental health service transfers	
349	Transfer between services by agreement of administrators	264
350	Transfer between services by requirement of chief psychiatrist	265
Division 3	Forensic disability service transfers	
351	Transfer between authorised mental health service and forensic disability service	266
Division 4	Interstate transfers	
352	Transfer of person subject to treatment authority to another State	266
353	Transfer of person subject to interstate order from another State	267
Division 5	General provisions	
354	Responsibility for person	268
355	Power to transport	269
356	Notice to tribunal	269

Contents

Part 6	Transport of persons	
Division 1	Preliminary	
357	Who is an authorised person	269
Division 2	Transport of persons within and to and from authorised mental health services and other particular places	
358	Transport within authorised mental health service	271
359	Transport to or from authorised mental health service and other particular places	271
360	Taking person after treatment and care to person's requested place	271
Division 3	Transport of absent persons	
361	Application of div 3	272
362	Administrator or person in charge may require return of absent person 273	
363	Limitation on requirement to return particular absent persons . . .	274
364	Authorised person may transport absent person	275
365	Effect on assessment period	275
Division 4	Transport of persons to and from interstate mental health services	
366	Apprehension of person absent from interstate mental health service 276	
367	Transport of person in Queensland to interstate mental health service 277	
368	Transport of person outside Queensland to authorised mental health service	277
369	Making of emergency examination authority	278
Division 5	Transport powers	
370	Application of div 5	279
371	Power to detain	279
372	Power to administer medication	279
373	Power to use mechanical restraint	280
374	Power to enter particular places	281
Division 6	Warrant for apprehension of person to transport person	
375	Application for warrant for apprehension of person	282
376	Issue of warrant	283
377	Electronic application	284
378	Additional procedure if electronic application	285
379	Defect in relation to a warrant	286
380	Warrants—entry procedure	286

Part 7	Security	
Division 1	Preliminary	
381	Purpose of pt 7	287
382	Definitions for pt 7	288
Division 2	Postal articles and other things in authorised mental health services	
383	Patient may receive and send postal article	289
384	Administrator may search thing received for patient	290
Division 3	Searches of patients of authorised mental health services or public sector health service facilities	
385	Application of div 3	291
386	Power to search on belief of possession of harmful thing	291
Division 4	Searches of involuntary patients on admission to or entry into high security units or other approved services	
387	Application of div 4	292
388	Power to search on admission or entry	293
Division 5	Searches of visitors to high security units or other approved services	
389	Application of div 5	293
390	Power to search visitor	294
391	Requirement to explain to visitor	294
392	Direction to leave	294
393	Visitor may leave thing with authorised security officer	294
394	Authorised security officer may ask visitor to leave thing with officer	295
395	Visitor may ask for search to stop	295
396	Return of thing to visitor	295
Division 6	Requirements for searches	
397	Requirements for personal search	296
398	Requirements for search requiring removal of clothing	296
399	Requirements for search of possessions	297
Division 7	Records of searches	
400	Record of search must be made	298
Division 8	Seizure	
401	Seizure of harmful or other thing	298
402	Receipt for seized thing	300
403	Access to seized thing	300

Contents

Division 9	Identity cards	
404	Approval of identity card	301
Division 10	Compensation	
405	Compensation for damage to possessions	301
Division 11	Exclusion of visitors	
406	Administrator may refuse to allow person to visit patient	302
Chapter 12	Mental Health Review Tribunal proceedings	
Part 1	Preliminary	
407	Purpose of ch 12	303
408	Particular decisions of no effect for classified patient.	304
Part 2	Review of treatment authorities	
Division 1	Preliminary	
409	Definitions for pt 2.	304
410	Matters to which tribunal must have regard	305
Division 2	When particular reviews are conducted	
411	When reviews are conducted	305
412	When periodic review deferred.	306
413	When tribunal must not conduct review	307
414	When particular tribunal review is not required	307
Division 3	Applications and notices of hearings	
415	Application for applicant review to state orders sought	307
416	Notice of hearing	308
Division 4	Decisions and orders	
Subdivision 1	Decisions to be made on review	
417	Decisions	308
418	Administrator to provide report.	309
419	Requirement to revoke treatment authority	309
Subdivision 2	Confirmation of treatment authority—related orders	
420	Application of sdiv 2	310
421	Change of category to community	310
422	Community category—deciding whether authorised doctor may reduce treatment in community	310
423	Inpatient category—limited community treatment	311
424	Conditions	311
425	Transfer to another authorised mental health service	311
426	Change of category to inpatient	312

427	Other orders	313
Part 3	Review of forensic orders (mental health) and forensic orders (disability)	
Division 1	Preliminary	
428	Application of pt 3	313
429	Definitions for pt 3	313
430	Matters to which tribunal must have regard	314
Division 2	When particular reviews are conducted	
431	When reviews are conducted	314
432	When periodic review deferred	315
433	Requirement to conduct periodic review suspended	316
434	When tribunal must not conduct review	316
435	When particular tribunal review is not required	316
Division 3	Applications and notices of hearings	
436	Application for applicant review to state orders sought	317
437	Notice of hearing	317
Division 4	Decisions and orders	
Subdivision 1	Decisions to be made on review	
438	Application of div 4	318
439	Decisions	318
440	Requirement to confirm forensic order	319
Subdivision 2	Confirmation of forensic order—related orders	
441	Application of sdiv 2	319
442	Change or confirmation of category	320
443	Inpatient category—orders about treatment in community	320
444	Community category—orders about treatment in community	321
445	Conditions	322
446	Other orders	322
Subdivision 3	Revocation of forensic order (mental health)—related orders	
447	Application of sdiv 3	323
448	Making of treatment support order	323
449	Making of treatment authority or no further order	323
Division 5	Restrictions on revoking or amending forensic orders	
450	Orders with non-revocation period	325
451	Order for person temporarily unfit for trial	325

Contents

452	Order for person charged with prescribed offence	326
453	Tribunal’s order takes effect after suspension or change of category ends	326
Division 6	Other provisions	
454	Transfer of responsibility for forensic patient	327
455	Person with dual disability	328
Part 4	Review of forensic orders (Criminal Code)	
456	Application of pt 4.	329
457	Tribunal to conduct hearing	329
458	Notice of hearing	329
459	Making of forensic order.	330
460	Application of ch 5 provisions.	330
Part 5	Review of treatment support orders	
Division 1	Preliminary	
461	Definitions for pt 5.	331
462	Matters to which tribunal must have regard	331
Division 2	When particular reviews are conducted	
463	When reviews are conducted	332
464	When periodic review deferred.	333
465	Requirement to conduct periodic review suspended	333
466	When tribunal must not conduct review	334
467	When particular tribunal review is not required	334
Division 3	Applications and notices of hearings	
468	Application for applicant review to state orders sought	334
469	Notice of hearing	334
Division 4	Decisions and orders	
Subdivision 1	Decisions to be made on review	
470	Decisions	335
471	Requirement to confirm treatment support order.	336
Subdivision 2	Confirmation of treatment support order—related orders	
472	Application of sdiv 2	336
473	Change of category to community	337
474	Community category—deciding whether authorised doctor may reduce treatment in community	337
475	Inpatient category—limited community treatment	337
476	Conditions	338

477	Transfer to another authorised mental health service	338
478	Change of category to inpatient	339
479	Other orders	339
Subdivision 3	Revocation of treatment support order—related orders	
480	Application of sdiv 3	339
481	Making of treatment authority or no further order.	340
Part 6	Review of fitness for trial	
Division 1	Review	
482	Application of div 1	341
483	Meaning of finding of unfitness.	342
484	When reviews are conducted	342
485	Notice of hearing	343
486	Decisions on review	343
Division 2	Procedures following review if person unfit for trial	
487	Application of div 2	344
488	Director of public prosecutions to decide whether proceeding to be discontinued	344
489	Proceeding discontinued at end of prescribed period	344
490	Effect of discontinuing proceeding	345
491	Proceeding may be discontinued at other time	346
Division 3	Procedures following review if person fit for trial	
492	Application of div 3	346
493	Definitions for div 3	346
494	Director of public prosecutions to give notice of fitness for trial	347
495	Listing proceeding for mention	347
Part 7	Review of detention of minors in high security units	
496	Application of pt 7	348
497	When reviews are conducted	349
498	Notice of hearing	349
499	Decision on review	350
Part 8	Applications for examination authorities	
500	Application for examination authority	350
501	Notice of hearing	351
502	Decision on application	352
503	Duration of examination authority.	352

Contents

504	Copy of examination authority to be given to administrator of authorised mental health service	353
Part 9	Applications for approval of regulated treatment	
Division 1	Electroconvulsive therapy	
505	Who may apply	353
506	Notice of hearing	353
507	Decision on application	354
Division 2	Non-ablative neurosurgical procedures	
508	Who may apply	355
509	Notice of hearing	355
510	Decision on application	356
Part 10	Applications for approval to transfer particular persons into and out of Queensland	
Division 1	Transfers into Queensland	
511	Definitions for div 1	357
512	Who may apply	357
513	Requirements for application	357
514	Notice of hearing	358
515	Decision on application	359
516	Making of forensic order	359
517	When approval takes effect	360
518	Transport of person	360
Division 2	Transfers out of Queensland	
519	Definition for div 2	361
520	Who may apply	361
521	Requirements for application	362
522	Notice of hearing	362
523	Decision on application	363
524	When approval takes effect	363
525	Transport of person	363
526	Effect on order	364
Part 11	Miscellaneous 365	
527	Relationship with ch 16, pt 2	365
528	Use of victim impact statement by tribunal	365

Chapter 13	Appeals	
Part 1	Preliminary	
529	Purpose of ch 13	365
Part 2	Appeals to tribunal	
530	Definitions for pt 2.	366
531	Appeal to tribunal	366
532	How to start appeal	366
533	Notice of appeal and hearing	367
534	Stay of decision pending appeal.	368
535	Appeal powers	368
Part 3	Appeals to Mental Health Court	
Division 1	Preliminary	
536	Definition for pt 3	369
Division 2	Making and hearing appeals	
537	Who may appeal.	369
538	Parties to appeal	369
539	How to start appeal	370
540	Frivolous or vexatious appeal.	370
541	Notice of appeal and hearing	370
542	Stay of decision pending appeal.	371
543	Notice of stay of decision on review of person's fitness for trial ..	372
544	Appeal powers	373
545	Mental Health Court may make forensic order or treatment support order.	373
546	Mental Health Court's decision final.	374
Part 4	Appeals to Court of Appeal	
547	Who may appeal.	374
548	How to start appeal	375
549	Appeal powers	375
550	Notice of decision	376
Chapter 14	Monitoring and enforcement	
Part 1	Preliminary	
551	Purpose of ch 14	377
552	Definitions for ch 14	377

Contents

Part 2	General provisions about inspectors	
Division 1	Appointment	
553	Appointment and qualifications	378
554	Functions of inspectors	379
555	Appointment conditions and limit on powers	379
556	When office ends	380
557	Resignation	380
Division 2	Identity cards	
558	Issue of identity card	380
559	Production or display of identity card	381
560	Return of identity card	381
Division 3	Miscellaneous provisions	
561	References to exercise of powers	381
562	Reference to document includes reference to reproductions from electronic document	382
Part 3	Entry of places by inspectors	
Division 1	Power to enter	
563	General power to enter places	382
Division 2	Entry by consent	
564	Application of div 2	383
565	Incidental entry to ask for access	383
566	Matters inspector must tell occupier	383
567	Consent acknowledgement	384
Division 3	Entry under warrant	
Subdivision 1	Obtaining warrant	
568	Application for warrant	385
569	Issue of warrant	385
570	Electronic application	386
571	Additional procedure if electronic application	387
572	Defect in relation to a warrant	388
Subdivision 2	Entry procedure	
573	Entry procedure	389
Part 4	General powers of inspectors after entering places	
574	Application of pt 4	390
575	General powers	390
576	Power to require reasonable help	392

577	Offence to contravene help requirement	392
Part 5	Seizure by inspectors and forfeiture	
Division 1	Power to seize	
578	Seizing evidence at a place that may be entered without consent or warrant	392
579	Seizing evidence at a place that may be entered only with consent or warrant	393
580	Seizure of property subject to security	394
Division 2	Powers to support seizure	
581	Power to secure seized thing	394
582	Offence to contravene other seizure requirement	395
583	Offence to interfere	395
Division 3	Safeguards for seized things	
584	Receipt and information notice for seized thing	395
585	Access to seized thing	396
586	Return of seized thing	397
Division 4	Forfeiture	
587	Forfeiture by chief psychiatrist decision	397
588	Information notice about forfeiture decision	398
589	Forfeiture on conviction	399
590	Procedure and powers for making forfeiture order	399
Division 5	Dealing with property forfeited or transferred to State	
591	When thing becomes property of the State	400
592	How property may be dealt with	400
Part 6	Other information-obtaining powers of inspectors	
593	Power to require name and address	400
594	Offence to contravene personal details requirement	401
595	Power to require information	401
596	Offence to contravene information requirement	402
Part 7	Miscellaneous provisions relating to inspectors	
Division 1	Damage	
597	Duty to avoid inconvenience and minimise damage	403
598	Notice of damage	403
Division 2	Compensation	
599	Claim	404
600	Court order	405

Contents

Part 8	Reviews and appeals about seizure and forfeiture	
601	Definitions for pt 8	405
602	Right of appeal	405
603	Appeal process starts with internal review	406
604	How to apply for internal review	406
605	Stay of operation of decision	407
606	Internal review decision	407
607	Who may appeal.	408
608	Procedure for an appeal to the court	408
609	Stay of operation of internal review decision	409
610	Powers of court on appeal	409
611	Effect of decision of court on appeal	410
Chapter 15	Suspension of criminal proceedings, offences and other legal matters	
Part 1	Preliminary	
612	Purpose of ch 15	410
Part 2	Suspension of criminal proceedings	
613	Purpose of pt 2	411
614	Suspension of proceedings	411
615	Giving notice of particular suspensions	412
616	Ending of suspension.	413
617	Giving notice of ending of suspension	413
618	Effect on powers relating to bail, discontinuance of proceedings and other matters	414
Part 3	Offences relating to patients	
619	Offence relating to ill-treatment	415
620	Offences relating to patients absconding	415
621	Offences relating to patients unlawfully absent	416
Part 4	Offences relating to officials	
622	Definition for pt 4	417
623	Obstructing official	417
624	Impersonating official	418
625	Giving official false or misleading information	418
Part 5	Detention and use of reasonable force	
626	Classified patient (voluntary) may be detained.	419
627	Detention of person in authorised mental health service with use of reasonable force.	419

628	Detention of person in public sector health service facility with use of reasonable force	419
629	Examination or assessment of involuntary patient without consent and with use of reasonable force	420
630	Treatment and care of patient without consent and with use of reasonable force	420
631	Relationship with use of physical restraint	421
Part 6	Evidence and legal proceedings	
632	Evidentiary aids	421
633	Proceedings for offences	423
Chapter 16	Establishment and administration of court and tribunal	
Part 1	Mental Health Court	
Division 1	Preliminary	
634	Purpose of pt 1	424
Division 2	Continuation, constitution, jurisdiction and powers	
635	Continuation of Mental Health Court	424
636	Constitution	425
637	Jurisdiction	426
638	Powers	427
Division 3	Membership	
639	Appointment of members	427
640	Appointment does not affect judge's tenure of office	427
641	Resignation of office	427
642	When member's office ends	428
Division 4	President	
643	Appointment of president	428
644	Arrangement of business	428
645	President holds office while member of court	429
646	Delegation of particular powers	429
647	Resignation of office	429
648	Appointment of acting president	429
Division 5	Assisting clinicians	
649	Functions	430
650	Appointment	430
651	Conditions of appointment	431
652	Resignation	431
653	Termination of appointment	431

Contents

Division 6	Mental Health Court Registry and registrar	
654	Mental Health Court Registry	432
655	Registry’s functions	432
656	Registrar’s functions	433
657	Registrar’s powers—general	433
658	Registrar’s power to issue subpoena	433
659	Registrar’s power to require administrator to produce document	434
660	Registrar’s power to require person to be brought before Mental Health Court	434
661	Registrar’s power to require prosecuting authority to give particular documents	435
662	Delegation by registrar	435
Division 7	Protection and immunities	
663	Contempt of court	436
664	Conduct that is contempt and offence	436
665	Protection and immunity for member of Mental Health Court and assisting clinician	436
Division 8	Court examination orders	
666	Making of court examination order	437
667	Recommendation or request for court examination order on reference 437	
668	Transport, detention and examination of person under court examination order	438
669	What happens at end of examination	439
Division 9	Reviews of detention in authorised mental health service or forensic disability service	
670	Definitions for div 9	440
671	Power to review detention	440
672	Notice of hearing	441
673	Parties to proceeding	441
674	Consideration of application	442
675	Appointment of person to inquire into detention	442
676	Administrator to ensure help given to appointed person	442
677	General powers of appointed person	442
678	Appointed person’s power to ask questions	443
679	Mental Health Court may direct person’s discharge	443
680	Other remedies not affected	444

Division 10	Procedural provisions	
681	General right of appearance and representation	444
682	Evidence	444
683	Proof of matters	444
684	Directions	445
685	Assisting clinician's advice before or during adjournment of hearing	445
686	Assisting clinician's advice during hearing	445
687	Particular advice of assisting clinician to be stated in reasons for decision	446
688	When court may conduct hearing in absence of person	446
689	Appointing assistant	446
690	Court may sit and adjourn hearing	446
691	Hearing of reference generally open to public	446
692	Particular hearings not generally open to public	447
693	Hearing about minor not open to public	447
694	Confidentiality order	448
695	Costs	449
696	Death or incapacity of member after hearing started	449
Division 11	Rules and practice	
697	Rule-making power	450
698	Directions about practice	450
Division 12	Miscellaneous	
699	Annual report	450
Part 2	Mental Health Review Tribunal	
Division 1	Preliminary	
700	Purpose of pt 2	451
701	Definition for pt 2	451
Division 2	Continuation, jurisdiction and powers	
702	Continuation of Mental Health Review Tribunal	452
703	Jurisdiction and independence	452
704	Powers	453
Division 3	Members and staff of tribunal	
705	Appointment of members	453
706	Duration of appointment	454
707	Terms of appointment	454
708	Resignation	454

Contents

709	Termination of appointment	455
710	Deputy president to act as president	455
711	Executive officer and other staff	455
712	President's functions generally	456
713	President's powers	457
Division 4	Constitution of tribunal for hearings	
714	Particular proceedings	457
715	Application for examination authority	458
716	Application for approval to perform non-ablative neurosurgical procedure	458
717	Matters president to consider in constituting tribunal	459
718	Presiding member	459
Division 5	Examinations, confidentiality orders and reports	
719	Tribunal may order examination	460
720	Confidentiality order	461
721	Reports for particular review proceedings	462
Division 6	Procedural provisions for ch 12 proceedings	
Subdivision 1	Applications	
722	Application of sdiv 1	463
723	Approved form	463
724	Frivolous or vexatious application.	463
725	Hearing of application.	464
Subdivision 2	Adjournment of hearing of particular periodic reviews	
726	Application of sdiv 2	464
727	Definitions for sdiv 2	465
728	Adjournment of hearing	465
729	Hearing of scheduled review to be conducted on relevant person's return	466
Division 7	General procedural provisions	
Subdivision 1	Preliminary	
730	Application of div 7	466
731	Conducting proceedings generally	466
732	Presentation of party's case and inspection of documents	467
Subdivision 2	Pre-hearing matters	
733	Matters to be stated in notice of hearing	467
734	Right to appear	467

735	Attorney-General to give notice of intention to appear	468
736	Disclosure of documents to be relied on in hearing	468
Subdivision 3	Hearings	
737	Right of representation and support	469
738	Appointment of representative	470
739	Hearing not open to public	471
740	Victim impact statement	471
741	Restrictions on disclosing victim impact statement	472
742	Requiring witness to attend or produce document or thing	473
743	Tribunal to allow party to call or give evidence	473
744	Proceeding by remote conferencing or on the papers	474
745	Proceeding in absence of involuntary patient.	474
746	Conducting hearings of proceedings at same time	475
747	Adjourning hearing of proceeding	475
748	Appointing assistant	475
749	Dealing with documents or other things	476
750	Way questions decided	476
751	Referring question of law to Mental Health Court.	477
752	Costs	477
Subdivision 4	Decisions of tribunal	
753	Notice of decision	478
754	Written reasons for decision.	478
755	Requirement to give effect to tribunal decision.	478
756	Publishing decision and reasons	479
Subdivision 5	Revocation of particular forensic orders and treatment support orders	
757	Order for missing person	479
Division 8	Offences and contempt	
758	Offences by witnesses	480
759	False or misleading information or document.	481
760	Fabricating evidence	481
761	Contempt of tribunal.	482
762	Punishment of contempt.	482
763	Conduct that is contempt and offence	483
Division 9	Protection and immunities	
764	Protection and immunity for members	484

Contents

765	Protection and immunity for other persons	484
Division 10	Rules and practice	
766	Rule-making power	484
767	Directions about practice	485
Division 11	Miscellaneous	
768	Authentication of documents	485
769	Judicial notice of particular signatures	485
770	Delegation	485
771	Register	485
772	Annual report	486
Chapter 17	Confidentiality	
Part 1	Preliminary	
773	Purpose of ch 17	486
774	Definitions for ch 17	487
775	Relationship of ch 17 with other Acts	487
Part 2	Duty of confidentiality	
776	Confidentiality of information obtained by designated person . . .	488
777	Confidentiality of information obtained by other persons	489
Part 3	Permitted use and disclosure	
778	Disclosure to identify person with mental health defence	489
779	Disclosure to identify and offer support to victims	490
780	Disclosure for report by private psychiatrist	490
781	Disclosure of particular information relating to classified patient .	491
782	Disclosure of particular information relating to person in contact with forensic disability service	491
783	Disclosure to lawyer	492
784	Disclosure of photograph of patient required to return	493
785	Disclosure of information for research purposes	493
Part 4	Offences relating to publication of judicial proceedings	
786	Definition for pt 4	494
787	Publication of reports and decisions on references—Mental Health Court and Court of Appeal	494
788	Publication of report of other proceedings	497
789	Publication of information disclosing identity of party to proceeding	497
790	Publication of date of hearing permitted	498
791	Publication of information disclosed at hearing permitted	498

Chapter 18	General provisions	
792	Detention of involuntary patient must be in inpatient unit	499
793	Use of audiovisual link for examination or assessment	499
794	Disclosure by QCAT of information about personal guardian	499
795	Protection of official from liability	500
796	Approved forms	500
797	Electronic format for notices and other information	501
798	Regulation-making power	502
Chapter 19	Repeal	
799	Repeal	502
Chapter 20	Transitional provisions	
Part 1	Preliminary	
800	Definitions for ch 20	502
801	Application of new Act in relation to proceedings for alleged offences 502	
802	Detention under repealed Act	503
Part 2	Provisions about assessment and detention under chapters 2 and 3 of repealed Act	
803	Assessment documents	503
804	Persons subject to assessment documents	503
805	Justices examination order	504
806	Emergency examination order	504
807	Detention for assessment	505
808	Agreement for assessment	506
809	Custodian's assessment authority	506
810	Taking person to authorised mental health service	506
811	Classified patients	507
812	Report of authorised doctor	507
813	Involuntary treatment orders	507
Part 3	Provisions about assessment or detention of persons before a court or in custody under chapter 3 of repealed Act	
814	Court assessment order	509
Part 4	Provisions about treatment and care of patients under chapter 4 of repealed Act	
815	Treatment plans	509
816	Limited community treatment	510
817	Monitoring conditions	510

Contents

Part 5	Provisions about electroconvulsive therapy under chapter 4 of repealed Act	
818	Consent to electroconvulsive therapy	511
819	Emergency electroconvulsive therapy	511
Part 6	Provisions about movement, transfer and temporary absence of patients under chapter 5 of repealed Act	
820	Move of patients interstate	511
821	Temporary absences	512
Part 7	Provisions about tribunal reviews under chapter 6 of repealed Act	
Division 1	Orders and decisions made before commencement	
822	Particular orders and decisions not given effect before commencement 513	
823	Particular decisions unaffected by new Act	513
Division 2	Reviews and applications not completed before commencement	
824	Existing applications to tribunal	514
825	Existing reviews started other than by an application.	515
826	Effect of tribunal's decision on existing review	516
Division 3	Other provisions	
827	When first periodic review under new Act must be conducted . . .	516
828	Discontinuing proceeding for offence following review of fitness for trial 519	
829	Non-contact order ends	520
Part 8	Provisions about examinations, references and orders under chapter 7 of repealed Act	
Division 1	Examinations under chapter 7, part 2 of repealed Act	
830	Making of reference under repealed Act by director or director of public prosecutions	520
Division 2	References	
831	Application of div 2	521
832	Hearing of reference continues under repealed Act.	521
833	Appeal against Mental Health Court's decision	522
Division 3	Forensic orders (Mental Health Court) and forensic orders (Mental Health Court—Disability)	
834	Forensic order (Mental Health Court).	522
835	Forensic order (Mental Health Court—Disability).	523
836	Limited community treatment for forensic patient.	525
837	Review of forensic order under new Act.	525

Division 4	Other provisions	
838	Order approving interstate transfer under s 288B of repealed Act	526
839	Forensic order (Criminal Code)	526
840	Custody order	527
841	Forensic order (Minister)	527
842	Forensic disability client temporarily detained in authorised mental health service	528
Part 9	Provisions about information orders under chapter 7A of repealed Act	
843	Forensic information orders	528
844	Classified patient information orders	528
Part 10	Provisions about security of authorised mental health services under chapter 10 of repealed Act	
845	Exclusion of visitors	529
Part 11	Provisions about Mental Health Court under chapter 11 of repealed Act	
846	Mental Health Court registry	529
847	Court examination order	529
848	Inquiry into detention of patient in authorised mental health service	530
Part 12	Miscellaneous	
849	Mental Health Court, tribunal or another court may make orders about transition from repealed Act to new Act	530
850	Notices generally	531
851	Records made under repealed Act	531
852	Material submitted by victim or concerned person	532
853	Subpoenas	532
854	Authorised mental health services and high security units	532
855	Office holders	532
856	Suspended proceedings	533
857	Reviews relating to serious risks	533
858	Appeals	534
859	Annual reports	534
860	References to orders and authorities under repealed Act	534
861	Application of new Act, s 418	535
862	Transitional regulation-making power	535

Contents

Chapter 21	Amendment of Acts	
Part 1	Amendment of this Act	
863	Act amended	536
864	Amendment of long title	536
Part 2	Amendment of Criminal Code	
865	Code amended	536
866	Amendment of ss 145A(a), 227C(3), definition lawful custody, 266 and 358	536
867	Amendment of s 613 (Want of understanding of accused person)	536
868	Amendment of s 645 (Accused person insane during trial)	537
869	Amendment of s 647 (Acquittal on ground of insanity)	537
870	Amendment of s 668F (Powers of Court in special cases)	537
871	Amendment of s 678 (Definitions)	537
Part 3	Amendment of Forensic Disability Act 2011	
872	Act amended	538
873	Amendment of s 4 (How purpose is to be achieved)	538
874	Amendment of s 6 (Application of Act)	538
875	Amendment of s 7 (General principles)	538
876	Amendment of s 10 (Who is a forensic disability client)	538
877	Amendment of s 14 (Preparing plan for client)	539
878	Amendment of s 15 (Content of plan)	539
879	Replacement of ch 2, pt 2, hdg (Limited community treatment) . .	539
	Part 2 Community treatment	
880	Amendment of s 20 (Authorising limited community treatment) . .	539
881	Amendment of s 21 (Limited community treatment on order of tribunal or Mental Health Court)	541
882	Amendment of s 22 (What individual development plan must state about limited community treatment)	541
883	Amendment of s 26 (Who is allied person if client does not have capacity to choose)	541
884	Insertion of new ch 4, pts 3 and 4	541
	Part 3 Temporary absence	
	32A Absence of client with director's approval.	542
	Part 4 Rights of allied person	
	32B Allied person to be notified of transfer of responsibility for forensic disability client.	542
885	Omission of ch 5 (Transfer and temporary absence of forensic disability clients)	543

886	Amendment of s 47 (Relationship with Disability Services Act) . . .	543
887	Amendment of s 84 (Procedure for appeal)	543
888	Amendment of s 91 (Policies and procedures about detention, care and support of clients)	544
889	Omission of s 92 (Giving information about client to director (mental health) or nominee)	544
890	Omission of s 98 (Administrator's obligation to ensure forensic order is given effect)	544
891	Amendment of s 113 (Taking client to forensic disability service or authorised mental health service)	544
892	Insertion of new s 113A	545
	113A Temporary admission of client to authorised mental health service	546
893	Amendment of s 114 (Application of pt 2)	546
894	Amendment of s 115 (Entry of places)	547
895	Amendment of s 116 (Offences relating to ill-treatment)	547
896	Amendment of s 117 (Offences relating to forensic disability clients absconding)	547
897	Amendment of s 122 (Confidentiality of information—other persons)	547
898	Omission of s 123 (Disclosure of confidential information)	547
899	Amendment of s 126 (Evidentiary provisions)	548
900	Amendment of s 128 (Protection of officials from liability)	548
901	Omission of ch 10 (Application of Mental Health Act)	548
902	Amendment of s 141 (Review by director)	548
903	Omission of s 142 (Transfer from forensic disability service to authorised mental health service)	549
904	Amendment of s 144 (Administration of medication for particular purposes)	549
905	Omission of s 149 (Director taken to have complied with particular requirements)	549
906	Omission of s 152 (Care of client detained temporarily in authorised mental health service)	549
907	Amendment of s 155 (Use of reasonable force)	549
908	Amendment of ch 13, hdg (Transitional provision)	550
909	Insertion of new ch 13, pt 1, hdg	550
	Part 1 Transitional provision for Forensic Disability Act 2011	
910	Insertion of new ch 13, pt 2	550
	Part 2 Transitional provisions for Mental Health Act 2015	

Contents

161	Definitions for pt 2	550
162	Temporary absence approval	551
163	Transfer order	551
164	Application of s 141	551
165	Application of transitional provisions to forensic disability clients	551
166	Transitional regulation-making power	552
911	Amendment of sch 2 (Dictionary)	552
Part 4	Amendment of Powers of Attorney Act 1998	
912	Act amended	554
913	Amendment of s 6A (Relationship with Guardianship and Administration Act 2000)	554
914	Amendment of s 38 (Act's relationship with Mental Health Act)	554
915	Amendment of sch 2 (Types of matters)	554
916	Amendment of sch 3 (Dictionary)	555
Part 5	Amendment of Public Health Act 2005	
917	Act amended	555
918	Amendment of s 7 (How object is mainly achieved)	555
919	Insertion of new ch 4A	556
	Chapter 4A Health of persons with major disturbance in mental capacity	
	Part 1 Preliminary	
157A	Definitions for ch 4A	556
	Part 2 Taking persons to treatment or care place	
157B	Ambulance officer or police officer may detain and transport person	558
157C	What ambulance officer or police officer must tell person	559
157D	Giving emergency examination authority	560
157E	Detention in treatment or care place	560
157F	Examination	561
	Part 3 Return of persons who abscond	
157G	Application of pt 3	562
157H	Administrator or person in charge may require return of absent person	562
157I	Duration of authorisation	563
157J	Authorised person may transport absent person	563
157K	Effect on examination period	564

	Part 4	Powers	
	157L	Use of force to detain and transport	565
	157M	Transfer to another treatment or care place	565
	157N	Use of reasonable force to detain person.	566
	157O	Examination of person without consent and with use of reasonable force.	566
	157P	Return after examination or treatment and care to person's requested place	566
	Part 5	Warrant for apprehension of person to transport person	
	157Q	Application for warrant for apprehension of person . . .	567
	157R	Issue of warrant	568
	157S	Electronic application	569
	157T	Additional procedure if electronic application.	570
	157U	Defect in relation to a warrant.	572
	157V	Warrants—entry procedure	572
	Part 6	Searches of persons in treatment or care place	
	157W	Application of pt 6.	573
	157X	Definitions for pt 6.	573
	157Y	Power to search on belief of possession of harmful thing	575
	157Z	Requirements for personal search	576
	157ZA	Requirements for search requiring the removal of clothing 577	
	157ZB	Requirements for search of possessions	578
	157ZC	Record of search must be made	578
	157ZD	Seizure of harmful thing	579
	157ZE	Receipt for seized thing	581
	157ZF	Access to seized thing	581
	Part 7	Miscellaneous	
	157ZG	Relationship with Guardianship and Administration Act 2000 581	
920		Amendment of sch 2 (Dictionary)	581
Chapter 22		Minor and consequential amendments	
921		Acts amended	583
Schedule 1		Information that applicant, or applicant's nominee, is entitled to receive under an information notice	584
1		Information about reviews	584

Contents

2	Information about transfer application	584
3	Information about tribunal decisions.	584
4	Information about appeals	585
5	Information about absences	585
6	Miscellaneous information	585
Schedule 2	Who may appeal to Mental Health Court	587
Schedule 3	Dictionary	589
Schedule 4	Minor or consequential amendments of particular legislation	611
	Bail Act 1980	611
	Child Protection (Offender Prohibition Order) Act 2008	611
	Child Protection (Offender Reporting) Act 2004.	611
	Commissions of Inquiry Act 1950.	613
	Coroners Act 2003	613
	Corrective Services Act 2006.	615
	Crime and Corruption Act 2001	615
	Criminal Law Amendment Act 1945.	616
	Criminal Proceeds Confiscation Act 2002	616
	Disability Services Act 2006.	617
	Guardianship and Administration Act 2000	623
	Hospital and Health Boards Act 2011	627
	Limitation of Actions Act 1974	628
	Penalties and Sentences Act 1992.	628
	Police Powers and Responsibilities Act 2000.	629
	Public Guardian Act 2014.	629
	Public Service Act 2008	630
	Residential Services (Accreditation) Act 2002	630
	Residential Tenancies and Rooming Accommodation Act 2008	631
	Statutory Instruments Act 1992	631
	Terrorism (Preventative Detention) Act 2005	631
	Victims of Crime Assistance Act 2009	631
	Weapons Act 1990.	632
	Working with Children (Risk Management and Screening) Act 2000	632
	Youth Justice Act 1992	635

2015

A Bill

for

An Act to provide for the treatment and care of people who have mental illnesses and for other purposes, to repeal the *Mental Health Act 2000*, to amend this Act, the Criminal Code, the *Forensic Disability Act 2011*, the *Powers of Attorney Act 1998* and the *Public Health Act 2005*, and to amend the Acts mentioned in schedule 4 for particular purposes

[s 1]

The Parliament of Queensland enacts—	1
Chapter 1 Preliminary	2
Part 1 Introduction	3
1 Short title	4
This Act may be cited as the <i>Mental Health Act 2015</i> .	5
2 Commencement	6
This Act commences on a day to be fixed by proclamation.	7
3 Main objects of Act	8
(1) The main objects of this Act are—	9
(a) to improve and maintain the health and wellbeing of persons who have a mental illness who do not have the capacity to consent to be treated; and	10 11 12
(b) to enable persons to be diverted from the criminal justice system if found to have been of unsound mind at the time of committing an unlawful act or to be unfit for trial; and	13 14 15 16
(c) to protect the community if persons diverted from the criminal justice system may be at risk of harming others.	17 18
(2) The main objects are to be achieved in a way that—	19
(a) safeguards the rights of persons; and	20
(b) is the least restrictive of the rights and liberties of a person who has a mental illness; and	21 22

(c)	promotes the recovery of a person who has a mental illness, and the person's ability to live in the community, without the need for involuntary treatment and care.	1 2 3
(3)	For subsection (2)(b), a way is the least restrictive of the rights and liberties of a person who has a mental illness if the way adversely affects the person's rights and liberties only to the extent required to protect the person's safety and welfare or the safety of others.	4 5 6 7 8
4	Act binds all persons	9
(1)	This Act binds all persons, including the State and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.	10 11 12
(2)	Nothing in this Act makes the State liable to be prosecuted for an offence.	13 14
Part 2	Principles for administration of Act	15 16
5	Principles for persons with mental illness	17
	The following principles apply to the administration of this Act in relation to a person who has, or may have, a mental illness—	18 19 20
(a)	Same human rights	21
	• the right of all persons to the same basic human rights must be recognised and taken into account	22 23
	• a person's right to respect for his or her human worth and dignity as an individual must be recognised and taken into account	24 25 26
(b)	Matters to be considered in making decisions	27

[s 5]

- to the greatest extent practicable, a person is to be encouraged to take part in making decisions affecting the person's life, especially decisions about treatment and care
 - to the greatest extent practicable, in making a decision about a person, the person's views, wishes and preferences are to be taken into account
 - a person is presumed to have capacity to make decisions about the person's treatment and care and other matters under this Act
- (c) Support persons**
- to the greatest extent practicable, family, carers and other support persons of a person who has a mental illness are to be involved in decisions about the person's treatment and care, subject to the person's right to privacy
- (d) Provision of support and information**
- to the greatest extent practicable, a person is to be provided with necessary support and information to enable the person to exercise rights under this Act, including, for example, providing access to other persons to help the person express the person's views, wishes and preferences
- (e) Achievement of maximum potential and self-reliance**
- to the greatest extent practicable, a person is to be helped to achieve maximum physical, social, psychological and emotional potential, quality of life and self-reliance
- (f) Acknowledgement of needs**
- a person's age-related, gender-related, religious, communication and other special needs must be recognised and taken into account
 - a person's hearing, visual or speech impairment must be recognised and taken into account

-
- (g) Aboriginal people and Torres Strait Islanders** 1
- the unique cultural, communication and other 2
needs of Aboriginal people and Torres Strait 3
Islanders must be recognised and taken into 4
account 5
 - Aboriginal people and Torres Strait Islanders 6
should be provided with treatment, care and 7
support in a way that recognises and is consistent 8
with Aboriginal tradition or Island custom, mental 9
health and social and emotional wellbeing, and is 10
culturally appropriate and respectful 11
 - to the extent practicable and appropriate in the 12
circumstances, communication with Aboriginal 13
people and Torres Strait Islanders is to be assisted 14
by an interpreter 15
- (h) Persons from culturally and linguistically diverse 16
backgrounds 17**
- the unique cultural, communication and other 18
needs of persons from culturally and linguistically 19
diverse backgrounds must be recognised and taken 20
into account 21
 - services provided to persons from culturally and 22
linguistically diverse backgrounds must have 23
regard to the person's cultural, religious and 24
spiritual beliefs and practices 25
 - to the extent practicable and appropriate in the 26
circumstances, communication with persons from 27
culturally and linguistically diverse backgrounds is 28
to be assisted by an interpreter 29
- (i) Minors 30**
- to the greatest extent practicable, a minor receiving 31
treatment and care must have the minor's best 32
interests recognised and promoted, including, for 33
example, by receiving treatment and care 34
separately from adults if practicable and by having 35
-

[s 6]

	the minor’s specific needs, wellbeing and safety recognised and protected	1 2
(j)	Maintenance of supportive relationships and community participation	3 4
	• to the greatest extent practicable, the importance of a person’s continued participation in community life and maintaining existing supportive relationships are to be taken into account, including, for example, by providing treatment in the community in which the person lives	5 6 7 8 9 10
(k)	Importance of recovery-oriented services and reduction of stigma	11 12
	• the importance of recovery-oriented services and the reduction of stigma associated with mental illness must be recognised and taken into account	13 14 15
(l)	Provision of treatment and care	16
	• treatment and care provided under this Act must be provided to a person who has a mental illness only if it is appropriate for promoting and maintaining the person’s health and wellbeing	17 18 19 20
(m)	Privacy and confidentiality	21
	• a person’s right to privacy and confidentiality of information about the person must be recognised and taken into account.	22 23 24
6	Principles for victims and others	25
(1)	The principles mentioned in subsection (2) apply to the administration of this Act in relation to each of the following (each a <i>victim</i>)—	26 27 28
(a)	a victim of an unlawful act;	29
(b)	a close relative of a victim of an unlawful act;	30

(c)	another individual who has suffered harm because of an unlawful act committed against a person mentioned in paragraph (a).	1 2 3
(2)	The principles are the following—	4
(a)	the physical, psychological and emotional harm caused to the victim by the unlawful act must be recognised with compassion;	5 6 7
(b)	the benefits of counselling, advice on the nature of proceedings under this Act and other support services to the recovery of the victim from the harm caused by the unlawful act must be recognised;	8 9 10 11
(c)	the benefits to the victim of being advised in a timely way of proceedings under this Act against a person in relation to the unlawful act must be recognised;	12 13 14
(d)	the benefits to the victim of the timely completion of proceedings against a person in relation to the unlawful act must be recognised;	15 16 17
(e)	the benefits to the victim of being advised in a timely way of a decision to allow a person to be treated in the community must be recognised;	18 19 20
(f)	the benefits to the victim of being given the opportunity to express the victim's views on the impact of the unlawful act to decision-making entities under this Act must be recognised.	21 22 23 24
7	Regard to principles	25
	In performing a function or exercising a power under this Act, a person is to have regard to the principles mentioned in sections 5 and 6.	26 27 28
8	Application to person with intellectual disability	29
	To the extent this Act applies to a person who has an intellectual disability—	30 31

[s 9]

- (a) sections 3 and 5 apply in relation to the person as if a reference in the sections to a person who has a mental illness were a reference to a person who has an intellectual disability; and
- (b) a reference in the Act to treatment and care of a person means a reference to care of the person; and
- (c) a reference in the Act to recovery of a person means a reference to the rehabilitation, and development of living skills, of the person.

Part 3 Interpretation

9 Definitions

The dictionary in schedule 3 defines particular words used in this Act.

10 Meaning of *mental illness*

- (1) ***Mental illness*** is a condition characterised by a clinically significant disturbance of thought, mood, perception or memory.
- (2) However, a person must not be considered to have a mental illness merely because—
 - (a) the person holds or refuses to hold a particular religious, cultural, philosophical or political belief or opinion; or
 - (b) the person is a member of a particular racial group; or
 - (c) the person has a particular economic or social status; or
 - (d) the person has a particular sexual preference or sexual orientation; or
 - (e) the person engages in sexual promiscuity; or

-
- (f) the person engages in immoral or indecent conduct; or 1
(g) the person takes drugs or alcohol; or 2
(h) the person has an intellectual disability; or 3
(i) the person engages in antisocial behaviour or illegal 4
behaviour; or 5
(j) the person is or has been involved in family conflict; or 6
(k) the person has previously been treated for a mental 7
illness or been subject to involuntary assessment or 8
treatment. 9
- (3) Subsection (2) does not prevent a person mentioned in the 10
subsection having a mental illness. 11
- Examples for subsection (3)—* 12
- 1 A person may have a mental illness caused by taking drugs or 13
alcohol. 14
- 2 A person may have a mental illness as well as an intellectual 15
disability. 16
- (4) A decision that a person has a mental illness must be made in 17
accordance with internationally accepted medical standards. 18

11 Meaning of *involuntary patient* 19

An *involuntary patient* means— 20

- (a) a person subject to any of the following— 21
- (i) an examination authority; 22
(ii) a recommendation for assessment; 23
(iii) a treatment authority; 24
(iv) a forensic order; 25
(v) a treatment support order; 26
(vi) a judicial order; or 27

[s 12]

- (b) a person detained in an authorised mental health service or public sector health service facility under section 36; or 1
2
3
- (c) a person from another State detained in an authorised mental health service under section 366(4). 4
5

12 Meaning of *treatment criteria* 6

- (1) The *treatment criteria* for a person are all of the following— 7
 - (a) the person has a mental illness; 8
 - (b) the person does not have capacity to consent to be treated for the illness; 9
10
 - (c) because of the person’s illness, the absence of involuntary treatment, or the absence of continued involuntary treatment, is likely to result in— 11
12
13
 - (i) imminent serious harm to the person or others; or 14
 - (ii) the person suffering serious mental or physical deterioration. 15
16
- (2) For subsection (1)(b), the person’s own consent only is relevant. 17
18
- (3) Subsection (2) applies despite the *Guardianship and Administration Act 2000*, the *Powers of Attorney Act 1998* or any other law. 19
20
21

13 Meaning of *less restrictive way* 22

- (1) For this Act, there is a *less restrictive way* for a person to receive treatment and care for the person’s mental illness if, instead of receiving involuntary treatment and care, the person is able to receive the treatment and care that is reasonably necessary for the person’s mental illness in 1 of the following ways— 23
24
25
26
27
28
 - (a) if the person is a minor—with the consent of the minor’s parent; 29
30

-
- (b) if the person has made an advance health directive—under the advance health directive; 1
2
- (c) if a personal guardian has been appointed for the person—with the consent of the personal guardian; 3
4
- (d) if an attorney has been appointed by the person—with the consent of the attorney; 5
6
- (e) otherwise—with the consent of the person’s statutory health attorney. 7
8
- Examples of when there may not be a less restrictive way for a person to receive the treatment and care that is reasonably necessary for the person’s mental illness—* 9
10
11
- 1 An advance health directive does not cover the matters that are clinically relevant or appropriate for the person’s treatment and care. 12
13
14
- 2 An advance health directive does not authorise the administration of the medications that are clinically necessary for the person’s treatment and care. 15
16
17
- 3 An attorney does not consent to the administration of the medications that are clinically necessary for the person’s treatment and care. 18
19
20
- (2) In deciding whether there is a less restrictive way for a person to receive the treatment and care that is reasonably necessary for the person’s mental illness, a person performing a function or exercising a power under this Act must— 21
22
23
24
- (a) consider the ways mentioned in subsection (1) in the listed order set out in the subsection; and 25
26
- (b) comply with the policy that must be made by the chief psychiatrist under section 303(1)(a) about when it may not be appropriate for a person to receive treatment and care for the person’s mental illness under an advance health directive or with the consent of a personal guardian, attorney or statutory health attorney for the person. 27
28
29
30
31
32
33
- (3) To remove any doubt, it is declared that this section does not limit the power of the public guardian to act as a statutory 34
35

[s 14]

health attorney for a person under the <i>Powers of Attorney Act 1998</i> .	1 2
(4) In this section—	3
public guardian means the public guardian under the <i>Public Guardian Act 2014</i> .	4 5
statutory health attorney means the person’s statutory health attorney under the <i>Powers of Attorney Act 1998</i> , section 63(1).	6 7
14 Meaning of <i>capacity</i> to consent to be treated	8
(1) A person has <i>capacity</i> to consent to be treated if the person—	9
(a) is capable of understanding, in general terms—	10
(i) that the person has an illness, or symptoms of an illness, that affects the person’s mental health and wellbeing; and	11 12 13
(ii) the nature and purpose of the treatment for the illness; and	14 15
(iii) the benefits and risks of the treatment, and alternatives to the treatment; and	16 17
(iv) the consequences of not receiving the treatment; and	18 19
(b) is capable of making a decision about the treatment and communicating the decision in some way.	20 21
(2) A person may have <i>capacity</i> to consent to be treated even though the person decides not to receive treatment.	22 23
(3) A person may be supported by another person in understanding the matters mentioned in subsection (1)(a) and making a decision about the treatment.	24 25 26
(4) This section does not affect the common law in relation to—	27
(a) the capacity of a minor to consent to be treated; or	28
(b) a parent of a minor consenting to treatment of the minor.	29

15	Responsibility for involuntary patient or forensic disability client	1 2
(1)	This section applies if a provision of this Act states that—	3
(a)	an authorised mental health service is responsible for an involuntary patient; or	4 5
(b)	the forensic disability service is responsible for a person subject to a forensic order (disability).	6 7
(2)	If subsection (1)(a) applies, the administrator of the authorised mental health service is responsible for the treatment and care of the involuntary patient under the authority or order to which the person is subject.	8 9 10 11
(3)	If subsection (1)(b) applies, the administrator of the forensic disability service is responsible for the care of the person under the forensic order (disability) to which the person is subject.	12 13 14 15
16	Purpose of limited community treatment	16
	The purpose of limited community treatment is to support a patient’s recovery by transitioning the patient to living in the community with appropriate treatment and care.	17 18 19
Part 4	Overview of Act	20
17	Purpose of pt 4	21
	This part gives an overview of this Act.	22
18	Treatment authorities	23
(1)	A treatment authority is a lawful authority to provide treatment and care to a person who has a mental illness who does not have capacity to consent to be treated.	24 25 26

[s 19]

- (2) A treatment authority may be made for a person if an authorised doctor considers the treatment criteria apply to the person and there is no less restrictive way for the person to receive treatment and care for the person’s mental illness, including, for example, under an advance health directive.
- (3) Key elements of the treatment criteria are that the person does not have capacity to consent to be treated and there is a risk of imminent serious harm to the person or others.
- (4) The category of a treatment authority is—
- (a) community, if the person’s treatment and care needs can be met in the community; or
- (b) inpatient, if the person’s treatment and care needs can be met only by being an inpatient.
- (5) If the category of a person’s treatment authority is inpatient, the person may receive limited community treatment, for a period of not more than 7 consecutive days, if authorised under this Act.

19 Persons in custody

A person in custody, including, for example, in a watch house or prison, may be transferred to an authorised mental health service for an assessment to decide if a treatment authority should be made for the person, or for treatment and care for the person’s mental illness.

20 Psychiatrist reports

- (1) If a person subject to a treatment authority, forensic order or treatment support order is charged with a serious offence, the person, or someone on the person’s behalf, may request that a psychiatrist prepare a report stating the psychiatrist’s opinion about whether the person—
- (a) may have been of unsound mind at the time of the alleged commission of the serious offence; or

-
- (b) may be unfit for trial. 1
- (2) Also, if a person is charged with a serious offence, whether or 2
not the person is subject to a treatment authority, forensic 3
order or treatment support order, the chief psychiatrist may 4
direct that a psychiatrist prepare a report about the matters 5
mentioned in subsection (1) if the chief psychiatrist considers 6
it is in the public interest. 7
- (3) A serious offence is an indictable offence, other than an 8
offence that, under the Criminal Code, must be heard and 9
decided summarily. 10
- 21 Mental Health Court 11**
- (1) The Mental Health Court decides whether a person charged 12
with a serious offence or other particular offences was of 13
unsound mind or, for the offence of murder, of diminished 14
responsibility, when the offence was allegedly committed or is 15
unfit for trial. 16
- (2) If the court decides a person was of unsound mind when the 17
offence was allegedly committed, or is unfit for trial, the court 18
may make a forensic order or treatment support order for the 19
person. 20
- (3) The forensic order may be a forensic order (mental health) or 21
a forensic order (disability). 22
- (4) The court must also decide the category of the order and, if 23
the category is inpatient, any limited community treatment for 24
the person. 25
- (5) If the court decides a person is unfit for trial and the unfitness 26
for trial is not permanent, the person's fitness for trial is 27
periodically reviewed by the Mental Health Review Tribunal. 28
- 22 Magistrates Courts 29**
- (1) A Magistrates Court may dismiss a complaint for a simple 30
offence if the court is reasonably satisfied, on the balance of 31
probabilities, that the person charged with the offence was, or 32

[s 23]

appears to have been, of unsound mind when the offence was allegedly committed or is unfit for trial.	1 2
(2) A Magistrates Court may also order that a person appearing before the court be examined by an authorised doctor to decide whether to make a treatment authority for the person or to make recommendations about the person’s treatment and care.	3 4 5 6 7
23 Treatment and care of patients	8
(1) The treatment and care of a patient is the responsibility of authorised doctors and administrators of authorised mental health services.	9 10 11
(2) A person subject to a treatment authority must be regularly assessed to decide if the treatment authority should continue.	12 13
(3) An authorised doctor may amend a person’s treatment authority, forensic order or treatment support order by changing the category of the authority or order, its conditions, or the nature or extent of limited community treatment.	14 15 16 17
(4) An amendment of an authority or order by an authorised doctor must be in accordance with decisions of the Mental Health Court and the Mental Health Review Tribunal.	18 19 20
(5) To the extent practicable, decisions in relation to treatment and care for a patient must be made in consultation with the patient and the patient’s family, carers and other support persons, subject to the patient’s right to privacy.	21 22 23 24
(6) The performance of electroconvulsive therapy and non-ablative neurosurgical procedures is regulated under this Act.	25 26 27
(7) Psychosurgery is prohibited under this Act.	28

24	Mechanical restraint, seclusion, physical restraint and other practices	1 2
(1)	The use of mechanical restraint, seclusion, physical restraint, and other practices are regulated under this Act.	3 4
(2)	The use of mechanical restraint on an involuntary patient in an authorised mental health service must be approved by the chief psychiatrist.	5 6 7
(3)	Mechanical restraint and seclusion may be used only if there is no other reasonably practicable way to protect the patient or others from physical harm.	8 9 10
25	Rights of patients	11
(1)	This Act provides for a statement of rights for involuntary patients and other patients of authorised mental health services.	12 13 14
(2)	A person may appoint 1 or 2 nominated support persons to support the person under this Act if the person becomes an involuntary patient.	15 16 17
(3)	The health service chief executive responsible for a public sector mental health service must appoint 1 or more independent patient rights advisers to advise patients and their nominated support persons, family, carers and other support persons of their rights under this Act.	18 19 20 21 22
26	Chief psychiatrist	23
(1)	The chief psychiatrist protects the rights of patients in authorised mental health services.	24 25
(2)	The chief psychiatrist makes policies and practice guidelines that must be complied with by persons performing functions in authorised mental health services.	26 27 28
(3)	The chief psychiatrist has powers to investigate matters under this Act.	29 30

[s 27]

27	Information notices	1
	Victims of unlawful acts, close relatives of the victims, and other particular persons may apply to the chief psychiatrist to receive specific information about the person who committed the unlawful act, including when treatment in the community is authorised for the person.	2 3 4 5 6
28	Mental Health Review Tribunal	7
(1)	The Mental Health Review Tribunal reviews the following—	8
	(a) treatment authorities;	9
	(b) forensic orders;	10
	(c) treatment support orders;	11
	(d) the fitness for trial of particular persons;	12
	(e) the detention of minors in high security units.	13
(2)	The Mental Health Review Tribunal also hears applications for the following—	14 15
	(a) examination authorities;	16
	(b) the approval of regulated treatment;	17
	(c) the transfer of particular patients into and out of Queensland.	18 19
(3)	This Act states when periodic reviews of treatment authorities, forensic orders and treatment support orders must take place.	20 21 22
(4)	An involuntary patient, or an interested person for the patient, may apply for a review at any time.	23 24
29	Appeals	25
	This Act provides for—	26
	(a) an appeal to the Mental Health Review Tribunal against particular decisions of the chief psychiatrist or the	27 28

	administrator of an authorised mental health service; and	1 2
(b)	an appeal to the Mental Health Court against particular decisions of the Mental Health Review Tribunal; and	3 4
(c)	an appeal to the Court of Appeal against a decision of the Mental Health Court on a reference in relation to a person.	5 6 7
Chapter 2	Making of treatment authorities after examination and assessment	8 9 10 11
Part 1	Preliminary	12
30	Purpose of ch 2	13
	The purpose of this chapter is to provide for—	14
(a)	matters relating to the examination and assessment of persons who may have a mental illness; and	15 16
(b)	the making of treatment authorities for persons who have a mental illness if—	17 18
(i)	the treatment criteria apply to the person; and	19
(ii)	there is no less restrictive way for the person to receive treatment and care for the person’s mental illness.	20 21 22
	<i>Note—</i>	23
	See also chapter 3 for other matters in relation to persons in custody who have or may have a mental illness.	24 25

[s 31]

Part 2	Examinations and recommendations for assessment	1 2 3
Division 1	Examinations generally	4
31	Examination	5
(1)	A doctor or authorised mental health practitioner may examine a person to decide whether to make a recommendation for assessment for the person.	6 7 8
(2)	Without limiting subsection (1), the examination may be carried out—	9 10
(a)	if the person asks for, or consents to, the examination; or	11
(b)	under this Act or another Act providing for the examination, including, for example, under an examination authority or emergency examination authority.	12 13 14 15
	<i>Note—</i>	16
	See chapter 12, part 8 in relation to applications for examination authorities.	17 18
(3)	However, a doctor or authorised mental health practitioner must not examine a person subject to a forensic order (mental health), forensic order (Criminal Code) or treatment support order to decide whether to make a recommendation for assessment for the person.	19 20 21 22 23

Division 2	Powers under examination authorities	1 2
32	Powers of doctor or authorised mental health practitioner	3
(1)	This section applies if a person is subject to an examination authority.	4 5
(2)	A doctor or authorised mental health practitioner may—	6
(a)	enter a place stated in the authority or another place in which the doctor or authorised mental health practitioner considers the person may be found, and any other place necessary for entry to either of those places, to find the person; and	7 8 9 10 11
(b)	examine the person, without the person’s consent, at—	12
(i)	the place at which the person is found; or	13
(ii)	if the doctor or authorised mental health practitioner considers it clinically appropriate—an authorised mental health service or public sector health service facility; and	14 15 16 17
(c)	detain the person at the place at which the person is examined for the period reasonably necessary for the examination.	18 19 20
(3)	If subsection (2)(b)(ii) applies to the person, an authorised person may transport the person to the authorised mental health service or public sector health service facility for the examination.	21 22 23 24
33	Reasonable help and force to exercise powers	25
	A doctor or authorised mental health practitioner may exercise a power under section 32 with the help, and using the force, that is necessary and reasonable in the circumstances.	26 27 28

[s 34]

34	Asking police officer for help	1
	For performing a function or exercising a power under section 32 in relation to a person, a doctor or authorised mental health practitioner is a public official for the <i>Police Powers and Responsibilities Act 2000</i> .	2 3 4 5
	<i>Note—</i>	6
	For the powers of a police officer while helping a public official, see the <i>Police Powers and Responsibilities Act 2000</i> , section 16.	7 8
35	Action before exercising powers	9
(1)	Before performing a function or exercising a power under section 32 in relation to a person, a doctor or authorised mental health practitioner must do or make a reasonable attempt to do each of the following—	10 11 12 13
	(a) identify himself or herself to the person;	14
	(b) tell the person an examination authority has been made;	15
	(c) explain to the person, in general terms, the nature and effect of the authority;	16 17
	(d) give the person a copy of the authority, if requested;	18
	(e) if the doctor or health practitioner is entering a place—give the person an opportunity to allow the doctor or health practitioner immediate entry to the place without using force.	19 20 21 22
(2)	However, the doctor or authorised mental health practitioner need not comply with subsection (1) if the doctor or health practitioner believes on reasonable grounds that not complying with the subsection is required to ensure the execution of the authority is not frustrated.	23 24 25 26 27
(3)	The doctor or authorised mental health practitioner must give a copy of the authority to the person’s nominated support persons, personal guardian or attorney, if requested.	28 29 30

Division 3	Detention of particular persons to make recommendation for assessment	1 2 3
36	Powers of doctor or authorised mental health practitioner	4
(1)	This section applies if—	5
(a)	a person asks for, or consents to, an examination under section 31 by a doctor or authorised mental health practitioner in an authorised mental health service or public sector health service facility; and	6 7 8 9
(b)	after examining the person, the doctor or authorised mental health practitioner decides under section 39 to make a recommendation for assessment for the person; and	10 11 12 13
(c)	there is a risk the person will leave the authorised mental health service or public sector health service facility in which the person is being examined before the recommendation for assessment is made.	14 15 16 17
(2)	The doctor or authorised mental health practitioner may detain the person in the authorised mental health service or public sector health service facility for the period, of not more than 1 hour, reasonably necessary to make the recommendation for assessment.	18 19 20 21 22
(3)	The doctor or authorised mental health practitioner must record in the person’s health records—	23 24
(a)	the reasons for detaining the person under subsection (2); and	25 26
(b)	the duration of the detention.	27
37	Reasonable help and force to exercise powers	28
	A doctor or authorised mental health practitioner may exercise a power under section 36 with the help, and using the force, that is necessary and reasonable in the circumstances.	29 30 31

[s 38]

38	Action before exercising powers	1
	Before exercising a power under section 36 in relation to a person, a doctor or authorised mental health practitioner must do or make a reasonable attempt to do the following—	2 3 4
	(a) identify himself or herself to the person;	5
	(b) tell the person a recommendation for assessment will be made;	6 7
	(c) explain to the person, in general terms, the nature and effect of a recommendation for assessment;	8 9
	(d) explain to the person that the person will be detained in the authorised mental health service or public health service facility for the period, of not more than 1 hour, reasonably necessary to make the recommendation for assessment;	10 11 12 13 14
	(e) give the person an opportunity to allow the doctor or health practitioner to make the recommendation for assessment without detaining the person.	15 16 17
Division 4	Recommendations for assessment	18
39	Making recommendation for assessment	19
	(1) A doctor or authorised mental health practitioner may, after examining a person under section 31, make a recommendation for assessment for the person if satisfied—	20 21 22
	(a) the treatment criteria may apply to the person; and	23
	(b) there appears to be no less restrictive way for the person to receive treatment and care for the person’s mental illness.	24 25 26
	(2) The recommendation for assessment must be made within 7 days after the examination.	27 28
	(3) The recommendation for assessment must be in the approved form.	29 30

-
- 40 Notice of making** 1
- (1) As soon as practicable after deciding to make the 2
recommendation for assessment, the doctor or authorised 3
mental health practitioner must— 4
- (a) tell the person of the decision; and 5
- (b) explain to the person the effect of the recommendation; 6
and 7
- (c) give the person a copy of the recommendation, if 8
requested. 9
- (2) Subsection (1)(c) does not apply if the doctor or authorised 10
mental health practitioner considers giving the person a copy 11
may adversely affect the health and wellbeing of the person. 12
- (3) Also, the doctor or authorised mental health practitioner must 13
give a copy of the recommendation to the person’s nominated 14
support persons, personal guardian or attorney, if requested. 15
- 41 Duration** 16
- A recommendation for assessment is in force for 7 days after 17
the day it is made. 18
- 42 Revocation** 19
- (1) A doctor or authorised mental health practitioner who makes a 20
recommendation for assessment for a person may revoke the 21
recommendation at any time before the start of the assessment 22
period for the person. 23
- (2) The doctor or authorised mental health practitioner may act 24
under subsection (1) only if the doctor or health practitioner is 25
no longer satisfied— 26
- (a) the treatment criteria may apply to the person; or 27
- (b) there appears to be no less restrictive way for the person 28
to receive treatment and care for the person’s mental 29
illness. 30

[s 43]

Part 3	Assessments	1
43	Making assessment	2
(1)	An authorised doctor may make an assessment of a person subject to a recommendation for assessment to decide—	3 4
(a)	whether the treatment criteria apply to the person; and	5
(b)	whether there is a less restrictive way for the person to receive treatment and care for the person’s mental illness.	6 7 8
(2)	The authorised doctor who makes the assessment under subsection (1) must not be the authorised doctor who made the recommendation for assessment for the person.	9 10 11
(3)	Subsection (2) does not apply if the authorised doctor is an authorised doctor for an authorised mental health service (rural and remote) and is the only authorised doctor reasonably available to make the assessment.	12 13 14 15
(4)	For subsection (1)(b), the authorised doctor must take reasonable steps to find out whether there is a less restrictive way for the person to receive treatment and care for the person’s mental illness, including, for example, by searching the person’s health records to find out whether the person has made an advance health directive or has a personal guardian.	16 17 18 19 20 21
44	Where and how person may be assessed	22
(1)	A person subject to a recommendation for assessment may be assessed in—	23 24
(a)	an authorised mental health service; or	25
(b)	a public sector health service facility; or	26
(c)	another place considered clinically appropriate by the authorised doctor making the assessment.	27 28

-
- (2) An authorised person may transport the person to an authorised mental health service or a public sector health service facility for assessment. 1
2
3
- Notes—* 4
- 1 For a person in custody subject to a recommendation for assessment, see section 65. 5
6
- 2 For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5. 7
8
- (3) An authorised doctor making an assessment of a person must discuss the assessment with the person. 9
10

45 Detention for assessment 11

- (1) If a person subject to a recommendation for assessment is to be assessed in an authorised mental health service or public sector health service facility, the person may be detained for assessment in the service or facility for a period of not more than 24 hours starting— 12
13
14
15
16
- (a) if the person is at the service or facility when the recommendation for assessment is made—when the recommendation is made; or 17
18
19
- (b) otherwise—when the person is first transported and admitted under the recommendation to the service or facility. 20
21
22
- (2) The authorised doctor making the assessment of the person may extend, or further extend, the period under subsection (1) before it ends to a period of not more than 72 hours after it starts if the authorised doctor considers the extension is necessary to carry out or finish the assessment. 23
24
25
26
27
- (3) If, at any time during the period mentioned in subsection (1), or extended under subsection (2), the authorised doctor making the assessment makes a decision on the assessment, the period for which the person may be detained for assessment ends. 28
29
30
31
32

[s 46]

- (4) The period under this section for which the person may be detained for assessment is the *assessment period* for the person. 1
2
3
- 46 Start of assessment period to be noted** 4
- (1) If the assessment period for a person starts as mentioned in section 45(1)(a)— 5
6
- (a) the doctor or authorised mental health practitioner who made the recommendation for assessment for the person must make a note on the recommendation of the time when the assessment period starts; and 7
8
9
10
- (b) the note must be made when the recommendation for assessment is made. 11
12
- (2) If the assessment period for a person starts as mentioned in section 45(1)(b)— 13
14
- (a) a health service employee must make a note on the recommendation for assessment of the time when the assessment period starts; and 15
16
17
- (b) the note must be made as soon as practicable after the person is admitted to the service or facility. 18
19
- 47 Explaining decision not to make treatment authority** 20
- (1) This section applies if, on making an assessment of a person subject to a recommendation for assessment, an authorised doctor decides— 21
22
23
- (a) the treatment criteria do not apply to the person; or 24
- (b) there is a less restrictive way for the person to receive treatment and care for the person’s mental illness. 25
26
- (2) The authorised doctor must— 27
- (a) tell the person of the decision; and 28
- (b) explain its effect to the person; and 29

-
- (c) make a note on the recommendation for assessment of the decision not to make a treatment authority for the person. 1
2
3

Part 4 Treatment authorities 4

48 Application of pt 4 5

This part applies if, on making an assessment of a person under part 3, the authorised doctor making the assessment is satisfied— 6
7
8

- (a) the treatment criteria apply to the person; and 9
(b) there is no less restrictive way for the person to receive treatment and care for the person’s mental illness. 10
11

49 Making treatment authority 12

The authorised doctor may make an authority (a *treatment authority*) for the person. 13
14

50 Form of treatment authority 15

- (1) The treatment authority must— 16
(a) be in the approved form; and 17
(b) state the following— 18
(i) the grounds on which the authorised doctor is satisfied the treatment criteria apply to the person; 19
20
(ii) the authorised mental health service responsible for the person’s treatment and care under the authority; 21
22
23
(iii) the category of the authority; 24

[s 51]

- (iv) if the authorised doctor decides under section 51(1) that the category of the authority is inpatient—whether limited community treatment is authorised for the person;
 - (v) the nature and extent of the treatment and care to be provided to the person;
 - (vi) any conditions the authorised doctor considers necessary for the person’s treatment and care.
- Note—*
- See schedule 3, definition *condition*.
- (2) For subsection (1)(b)(ii), if the authorised doctor decides under section 51(1) that the category of the authority is inpatient, the authorised mental health service responsible for the person’s treatment and care must not be a high security unit without the prior written approval of the chief psychiatrist.
- 51 Category**
- (1) If the authorised doctor makes a treatment authority for the person, and the person is not a classified patient, the authorised doctor must decide whether the category of the authority is—
- (a) inpatient; or
 - (b) community.
- (2) In deciding the category of the authority, the authorised doctor must have regard to the relevant circumstances of the person.
- (3) However, the authorised doctor may decide the category of the authority is inpatient only if the authorised doctor considers, after having regard to the relevant circumstances of the person, that 1 or more of the following can not reasonably be met if the category of the authority is community—
- (a) the person’s treatment and care needs;
 - (b) the safety and welfare of the person;

(c)	the safety of others.	1
(4)	If the person is a classified patient, the category of the authority is inpatient.	2 3
52	Limited community treatment	4
(1)	If the authorised doctor decides under section 51(1) that the category of the treatment authority is inpatient, the authorised doctor must decide whether to authorise limited community treatment.	5 6 7 8
	<i>Note—</i>	9
	See chapter 7, part 6 for the authorisation of limited community treatment for classified patients.	10 11
(2)	The authorised doctor may decide to authorise limited community treatment only if satisfied limited community treatment is appropriate having regard to—	12 13 14
(a)	the relevant circumstances of the person; and	15
(b)	the purpose of limited community treatment.	16
(3)	If limited community treatment is authorised under this section, the person’s treatment authority must state—	17 18
(a)	the nature and conditions of the limited community treatment; and	19 20
(b)	the period, of not more than 7 consecutive days, of the limited community treatment; and	21 22
(c)	the duration for which the authorisation is in force.	23
	<i>Example for paragraphs (b) and (c)—</i>	24
	limited community treatment may be authorised for a period of 1 day per week for a duration of 8 weeks	25 26
53	Nature and extent of treatment and care	27
	In deciding the nature and extent of the treatment and care to be provided to the person under the treatment authority, the authorised doctor must—	28 29 30

[s 54]

(a)	discuss the treatment and care to be provided with the person; and	1 2
(b)	have regard to the views, wishes and preferences of the person, to the extent they can be expressed, including, for example, in an advance health directive.	3 4 5
54	When advance health directive not followed	6
(1)	This section applies if—	7
(a)	the person has an advance health directive relating to the person’s future treatment and care for a mental illness; and	8 9 10
(b)	either—	11
(i)	the authorised doctor decides to make a treatment authority despite the person having an advance health directive; or	12 13 14
(ii)	the nature and extent of the treatment and care decided by the authorised doctor under section 53 is inconsistent with the views, wishes and preferences of the person expressed in the advance health directive.	15 16 17 18 19
(2)	The authorised doctor must—	20
(a)	explain to the person the reasons why the authorised doctor made the decision mentioned in subsection (1)(b); and	21 22 23
(b)	record the reasons in the person’s health records.	24
55	Notice of making	25
(1)	As soon as practicable after making a treatment authority for a person, the authorised doctor must—	26 27
(a)	tell the person of the decision; and	28
(b)	explain its effect to the person.	29

-
- (2) If the authorised doctor is a psychiatrist, the administrator of the person's treating health service must, within 7 days after the treatment authority is made—
- (a) give the person a copy of the authority; and
 - (b) give the person's nominated support persons, personal guardian or attorney a copy of the authority, if requested; and
 - (c) give the tribunal written notice of its making.
- (3) If the authorised doctor is not a psychiatrist, the administrator of the person's treating health service must—
- (a) give the person a copy of the authority, if requested; and
 - (b) give the person's nominated support persons, personal guardian or attorney a copy of the authority, if requested.
- 56 Review of treatment authority if not made by psychiatrist**
- (1) This section applies if a treatment authority is made by an authorised doctor who is not a psychiatrist.
- (2) An authorised psychiatrist must review the treatment authority and decide whether—
- (a) to confirm the treatment authority, with or without amendment; or
 - (b) to revoke the treatment authority.
- (3) The review must happen—
- (a) within 3 days (the *review period*) after the treatment authority is made; or
 - (b) if the person subject to the treatment authority is a patient of an authorised mental health service (rural and remote) and it is not reasonably practicable to complete the review within 3 days—within 7 days (also the *review period*) after the treatment authority is made.

[s 57]

- (4) An authorised doctor may give the person subject to the treatment authority a written notice directing the person to attend for the review at a stated authorised mental health service or public sector health service facility on a stated day within the review period. 1
2
3
4
5
- Note—* 6
- See chapter 11, part 6, division 3 for the powers that may be used in relation to a person who does not comply with a direction under subsection (4). 7
8
9
- (5) The person subject to the treatment authority may be detained for the review in the stated service or facility for a period of not more than 6 hours starting when the person is admitted to the service or facility for the review. 10
11
12
13
- (6) A review of a treatment authority does not affect the operation of the treatment authority before a decision is made to confirm or revoke it under subsection (2). 14
15
16

57 Decision on review 17

- (1) On a review under section 56 of a treatment authority, the authorised psychiatrist may decide to confirm the treatment authority only if satisfied— 18
19
20
- (a) the treatment criteria apply to the person; and 21
- (b) there is no less restrictive way for the person to receive treatment and care for the person’s mental illness. 22
23
- (2) If the authorised psychiatrist decides to confirm the treatment authority, the authorised psychiatrist must— 24
25
- (a) decide whether to amend the treatment authority in any of the following ways— 26
27
- (i) to change the category of the authority; 28
- (ii) to authorise or revoke, or change the nature or extent of, limited community treatment; 29
30
- (iii) to impose a condition on, or change a condition of, the authority; and 31
32

-
- (b) decide the nature and extent of the treatment and care to be provided to the person under the treatment authority. 1
2
- (3) In deciding— 3
- (a) whether to change the category of the authority, section 4
51 applies to the authorised psychiatrist as if a reference 5
in the section to an authorised doctor were a reference to 6
the authorised psychiatrist; and 7
- (b) whether to authorise or revoke, or change the nature or 8
extent of, limited community treatment, section 52 9
applies to the authorised psychiatrist as if a reference in 10
the section to an authorised doctor were a reference to 11
the authorised psychiatrist; and 12
- (c) the nature and extent of the treatment and care to be 13
provided to the person, section 53 applies to the 14
authorised psychiatrist as if a reference in the section to 15
an authorised doctor were a reference to the authorised 16
psychiatrist. 17
- (4) If, after reviewing the treatment authority, the authorised 18
psychiatrist is not satisfied of the matters mentioned in 19
subsection (1), the authorised psychiatrist must decide to 20
revoke the treatment authority. 21
- (5) The authorised psychiatrist must make a note on the treatment 22
authority of the decision on the review. 23
- (6) If a treatment authority made by an authorised doctor who is 24
not an authorised psychiatrist is not confirmed under 25
subsection (1) or revoked under subsection (4) within the 26
review period for the treatment authority, the treatment 27
authority is revoked at the end of the review period. 28
- (7) However, subsection (6) does not apply if the person does not 29
attend for the review as directed under section 56(4). 30

[s 58]

58	Notice about review	1
(1)	As soon as practicable after making a decision under section 57 on a review of a treatment authority for a person, the authorised psychiatrist must—	2 3 4
(a)	tell the person of the decision; and	5
(b)	explain its effect to the person.	6
(2)	If the decision on the review is to confirm the treatment authority, the administrator of the person’s treating health service must, within 7 days after the decision—	7 8 9
(a)	give the person a copy of the authority; and	10
(b)	give the tribunal written notice of the decision.	11
59	Date for first assessment	12
(1)	If an authorised doctor makes a treatment authority for a person, the authorised doctor must decide and record in the person’s health records a date for the first regular assessment of the patient under section 205.	13 14 15 16
(2)	The date for the assessment must be not later than 3 months after the day the treatment authority is made.	17 18
60	Relationship with forensic order (disability)	19
	If a treatment authority for a person is inconsistent with a forensic order (disability) for the person, the forensic order (disability) prevails to the extent of the inconsistency.	20 21 22

Chapter 3	Persons in custody	1
Part 1	Preliminary	2
61	Purpose of ch 3	3
	The purpose of this chapter is to provide for—	4
	(a) the transport of persons in custody to an inpatient unit of an authorised mental health service—	5 6
	(i) for assessment under chapter 2, part 3; or	7
	(ii) to receive treatment and care under this Act for the person’s mental illness; and	8 9
	(b) persons subject to examination orders or court examination orders remaining in an inpatient unit of an authorised mental health service to receive treatment and care under this Act for the person’s mental illness; and	10 11 12 13 14
	(c) particular requirements that apply when persons become classified patients; and	15 16
	(d) the return to custody, or release from detention in an authorised mental health service, of classified patients.	17 18
62	Definitions for ch 3	19
	In this chapter—	20
	<i>administrator consent</i> , for a person in custody, means consent given by the administrator of an authorised mental health service under section 69 for the transport of the person.	21 22 23
	<i>classified patient</i> see section 64(1).	24
	<i>classified patient (involuntary)</i> see section 64(2).	25
	<i>classified patient (voluntary)</i> see section 64(3).	26

[s 63]

custodian consent, for a person in custody, means consent
given under section 71 for the transport of the person. 1 2

notice event see section 81(1). 3

person in custody see section 63. 4

transfer recommendation see section 68(2). 5

63 Meaning of *person in custody* 6

(1) A *person in custody* is a person who is in lawful custody— 7

(a) on a charge of an offence or awaiting sentence on
conviction for an offence; or 8 9

(b) without charge under— 10

(i) an Act of the State, other than this Act; or 11

(ii) an Act of the Commonwealth; or 12

(c) serving a sentence of imprisonment, or period of
detention under a court order, for an offence and who is
not released on parole. 13 14 15

(2) To remove any doubt, it is declared that an offence mentioned
in subsection (1) includes an offence against a law of the
Commonwealth. 16 17 18

Note— 19

See the *Judiciary Act 1903* (Cwlth), section 68 (Jurisdiction of State and
Territory courts in criminal cases). 20 21

64 Meaning of *classified patient* 22

(1) A *classified patient* is— 23

(a) a classified patient (involuntary); or 24

(b) a classified patient (voluntary). 25

(2) A *classified patient (involuntary)* is— 26

(a) a person who is— 27

(i) subject to any of the following— 28

-
- | | | |
|-------|---|----------------------|
| (A) | a recommendation for assessment; | 1 |
| (B) | a treatment authority; | 2 |
| (C) | a forensic order (mental health); | 3 |
| (D) | a treatment support order; and | 4 |
| (ii) | transported under part 2 from a place of custody to an inpatient unit of an authorised mental health service; and | 5
6
7 |
| (iii) | admitted to the inpatient unit of the authorised mental health service; or | 8
9 |
| (b) | a person who— | 10 |
| (i) | is subject to any of the following— | 11 |
| (A) | a treatment authority; | 12 |
| (B) | a forensic order; | 13 |
| (C) | a treatment support order; and | 14 |
| (ii) | remains in an inpatient unit of an authorised mental health service under section 74. | 15
16 |
| (3) | A <i>classified patient (voluntary)</i> is— | 17 |
| (a) | a person who— | 18 |
| (i) | is transported under part 2 from a place of custody to an inpatient unit of an authorised mental health service; and | 19
20
21 |
| (ii) | is admitted to the inpatient unit of the authorised mental health service; and | 22
23 |
| (iii) | consents under section 67 or 79 to receiving treatment and care for the person’s mental illness in the inpatient unit of the authorised mental health service; or | 24
25
26
27 |
| (b) | a person who— | 28 |
| (i) | remains in an inpatient unit of an authorised mental health service under section 74; and | 29
30 |

[s 65]

- | | |
|---|---|
| (ii) consents under section 74 to receiving treatment | 1 |
| and care for the person’s mental illness in the | 2 |
| inpatient unit of the authorised mental health | 3 |
| service. | 4 |

Part 2	Transport of persons in	5
	custody to authorised mental	6
	health services	7

65	Transport for assessment	8
-----------	---------------------------------	---

- | | |
|--|----------------------|
| (1) This section applies to a person in custody who is subject to a recommendation for assessment. | 9
10 |
| (2) The person may be transported by an authorised person from the person’s place of custody to an inpatient unit of an authorised mental health service for assessment under chapter 2, part 3. | 11
12
13
14 |
| (3) The authorised person may transport the person only if both of the following have been made for the person— | 15
16 |
| (a) an administrator consent; | 17 |
| (b) a custodian consent. | 18 |
| (4) Despite section 44(1) and (2), the person may be transported only to, and assessed only in, an inpatient unit of an authorised mental health service. | 19
20
21 |

66	Transport for treatment and care under treatment authority or particular orders	22 23
-----------	--	----------

- | | |
|---|----------------|
| (1) This section applies to a person in custody who is subject to a treatment authority, forensic order (mental health) or treatment support order. | 24
25
26 |
|---|----------------|

-
- (2) The person may be transported by an authorised person from the person’s place of custody to an inpatient unit of an authorised mental health service to receive treatment and care for the person’s mental illness. 1
2
3
4
- (3) The authorised person may transport the person only if all of the following have been made for the person— 5
6
- (a) a transfer recommendation; 7
- (b) an administrator consent; 8
- (c) a custodian consent. 9
- (4) When the person is admitted to the inpatient unit of the authorised mental health service— 10
11
- (a) if the category of the person’s treatment authority, forensic order (mental health) or treatment support order is community—the category is changed to inpatient; and 12
13
14
- (b) if limited community treatment has been authorised for the person by an authorised doctor under section 52, 57, 209, 212 or 216—the authorisation is revoked; and 15
16
17
- (c) if limited community treatment has been ordered or approved by the Mental Health Court or tribunal—the order or approval is of no effect while the person is receiving treatment and care for the person’s mental illness in the inpatient unit. 18
19
20
21
22
- 67 Transport for treatment and care by consent 23**
- (1) This section applies to a person in custody who— 24
- (a) is not subject to a treatment authority, forensic order (mental health) or treatment support order; and 25
26
- (b) consents to receiving treatment and care for the person’s mental illness in an inpatient unit of an authorised mental health service. 27
28
29
- (2) The person may be transported by an authorised person from the person’s place of custody to an inpatient unit of an 30
31
-

[s 68]

authorised mental health service to receive treatment and care for the person’s mental illness.	1 2
(3) The authorised person may transport the person only if all of the following have been made for the person—	3 4
(a) a transfer recommendation;	5
(b) an administrator consent;	6
(c) a custodian consent.	7
(4) The person may withdraw the person’s consent under subsection (1)(b) at any time.	8 9
<i>Note—</i>	10
If the person withdraws consent, see sections 80 and 83.	11
(5) Subsection (4) does not prevent a treatment authority being made under chapter 2 for the person.	12 13
68 Transfer recommendation	14
(1) This section applies to a person in custody who—	15
(a) is subject to a treatment authority, forensic order (mental health) or treatment support order; or	16 17
(b) consents to receiving treatment and care for the person’s mental illness in an inpatient unit of an authorised mental health service.	18 19 20
(2) A doctor or authorised mental health practitioner may, in the approved form, make a recommendation (a <i>transfer recommendation</i>) for the person to be transported by an authorised person from the person’s place of custody to an inpatient unit of an authorised mental health service to receive treatment and care for the person’s mental illness.	21 22 23 24 25 26
(3) The doctor or authorised mental health practitioner may make the transfer recommendation only if satisfied—	27 28
(a) for a person who is not subject to a treatment authority, forensic order (mental health) or treatment support order—the person may have a mental illness; and	29 30 31

-
- (b) it is clinically appropriate for the person to receive treatment and care for the person’s mental illness in an authorised mental health service. 1
2
3
- (4) As soon as practicable after making the transfer recommendation, the doctor or authorised mental health practitioner must— 4
5
6
- (a) tell the person of the making of the transfer recommendation; and 7
8
- (b) explain its effect to the person; and 9
- (c) give the person a copy of the transfer recommendation, if requested. 10
11
- (5) Subsection (4)(c) does not apply if the doctor or authorised mental health practitioner considers giving the copy may adversely affect the health and wellbeing of the person. 12
13
14
- (6) Also, the doctor or authorised mental health practitioner must give a copy of the transfer recommendation to the person’s nominated support persons, personal guardian or attorney, if requested. 15
16
17
18
- 69 Administrator consent** 19
- (1) This section applies to a person in custody who— 20
- (a) is subject to a recommendation for assessment; or 21
- (b) is subject to a treatment authority, forensic order (mental health) or treatment support order; or 22
23
- (c) consents to receiving treatment and care for the person’s mental illness in an inpatient unit of an authorised mental health service. 24
25
26
- (2) The administrator of an authorised mental health service may, in the approved form, consent to the person in custody being transported by an authorised person from the person’s place of custody to an inpatient unit of the authorised mental health service— 27
28
29
30
31

[s 70]

- | | | |
|-----------|---|----------------------------------|
| (a) | for a person mentioned in subsection (1)(a)—for
assessment under chapter 2, part 3; or | 1
2 |
| (b) | for a person mentioned in subsection (1)(b) or (c)—to
receive treatment and care for the person’s mental
illness. | 3
4
5 |
| (3) | The administrator may consent only if satisfied— | 6 |
| (a) | the authorised mental health service has capacity— | 7 |
| (i) | for a person mentioned in subsection (1)(a)—to
carry out the assessment; or | 8
9 |
| (ii) | for a person mentioned in subsection (1)(b) or
(c)—to provide treatment and care for the person’s
mental illness; and | 10
11
12 |
| (b) | for an authorised mental health service that is not a high
security unit—that carrying out the assessment, or
providing the treatment and care, would not pose an
unreasonable risk to the safety of the person or others
having regard to— | 13
14
15
16
17 |
| (i) | the person’s mental state and psychiatric history;
and | 18
19 |
| (ii) | the person’s treatment and care needs; and | 20 |
| (iii) | the security requirements for the person. | 21 |
| 70 | Prior approval of chief psychiatrist for transport of minor
to high security unit | 22
23 |
| (1) | If a person in custody mentioned in section 69(1) is a minor,
the administrator of an authorised mental health service that is
a high security unit must not give consent under section 69 for
the transport of the minor from the minor’s place of custody to
the high security unit unless the chief psychiatrist has given
prior written approval of the giving of the consent. | 24
25
26
27
28
29 |
| (2) | In deciding whether to give the approval, the chief psychiatrist
must have regard to the following— | 30
31 |
| (a) | the minor’s mental state and psychiatric history; | 32 |

-
- (b) the minor’s treatment and care needs; 1
- (c) the security requirements for the minor. 2
- (3) As soon as practicable after deciding to give the approval, the 3
chief psychiatrist must give a copy of the written approval to 4
the administrator. 5
- 71 Custodian consent** 6
- (1) This section applies to a person in custody who— 7
- (a) is subject to a recommendation for assessment; or 8
- (b) is subject to a treatment authority, forensic order (mental 9
health) or treatment support order; or 10
- (c) consents to receiving treatment and care for the person’s 11
mental illness in an inpatient unit of an authorised 12
mental health service. 13
- (2) The custodian of the person in custody must, in the approved 14
form, consent to the person being transported by an authorised 15
person from the person’s place of custody to an inpatient unit 16
of an authorised mental health service— 17
- (a) for a person mentioned in subsection (1)(a)—for 18
assessment under chapter 2, part 3; or 19
- (b) for a person mentioned in subsection (1)(b) or (c)—to 20
receive treatment and care for the person’s mental 21
illness. 22
- (3) However, subsection (2) does not apply if the custodian is 23
satisfied that carrying out the assessment, or providing the 24
treatment and care, would pose an unreasonable risk to the 25
safety of the person or others having regard to the security 26
requirements for the person. 27
- (4) The approved form must state the particular authorised mental 28
health service to which the person is to be transported for the 29
assessment or the treatment and care. 30

[s 72]

72	Notice to chief psychiatrist if person in custody not transported within 72 hours	1 2
(1)	This section applies if—	3
(a)	a person mentioned in section 65 is not transported to an inpatient unit of an authorised mental health service within 72 hours after the recommendation for assessment for the person is made; or	4 5 6 7
(b)	a person mentioned in section 66 or 67 is not transported to an inpatient unit of an authorised mental health service within 72 hours after the transfer recommendation for the person is made.	8 9 10 11
(2)	As soon as practicable after the end of the 72 hour period, a doctor or authorised mental health practitioner must give the chief psychiatrist written notice that the person has not been transported to an inpatient unit of an authorised mental health service under the recommendation for assessment or transfer recommendation.	12 13 14 15 16 17
73	Chief psychiatrist consent for transport	18
(1)	This section applies if the chief psychiatrist—	19
(a)	receives a written notice under section 72(2) about a person in custody; or	20 21
(b)	otherwise becomes aware a person has not been transported to an inpatient unit of an authorised mental health service under a recommendation for assessment or transfer recommendation for the person.	22 23 24 25
(2)	The chief psychiatrist may decide to consent to the person being transported to an inpatient unit of an authorised mental health service for the assessment or for the treatment and care.	26 27 28
(3)	In deciding whether to give consent, the chief psychiatrist must have regard to the matters to which an administrator of an authorised mental health service must have regard under section 69(3) in giving consent under section 69(2).	29 30 31 32

-
- (4) As soon as practicable after the chief psychiatrist decides to give consent, the chief psychiatrist must give written notice of the decision to the administrator of the authorised mental health service to which the person is to be transported. 1
2
3
4
- (5) The chief psychiatrist’s consent has the same effect as if the administrator had given consent under section 69(2) for the transport of the person. 5
6
7
- (6) As soon as practicable after receiving the notice under subsection (4), and subject to a custodian consent being given for the person, the administrator must arrange for the person to be transported by an authorised person to the inpatient unit of the authorised mental health service. 8
9
10
11
12

Part 3 **Persons in custody remaining** 13
in authorised mental health 14
services 15

74 **Person subject to examination order or court** 16
examination order remaining in authorised mental health 17
service 18

- (1) This section applies if— 19
- (a) a person is transported by an authorised person, under an examination order or a court examination order, from the person’s place of custody to an authorised mental health service; and 20
21
22
23
- (b) the authorised doctor making the examination considers it is clinically appropriate for the person to receive treatment and care for the person’s mental illness in an inpatient unit of an authorised mental health service; and 24
25
26
27
28
- (c) either— 29

[s 74]

- (i) the person is subject to a treatment authority, forensic order (mental health) or treatment support order; or
 - (ii) the person consents to receiving treatment and care for the person's mental illness in an inpatient unit of an authorised mental health service.
- (2) The person may remain in the inpatient unit of the authorised mental health service to receive treatment and care for the person's mental illness if all of the following have been made for the person—
 - (a) a recommendation in writing by the authorised doctor for the person to receive treatment and care for the person's mental illness in an inpatient unit of an authorised mental health service;
 - (b) an administrator consent;
 - (c) a custodian consent.
- (3) For subsection (2)(a), the authorised doctor may make the recommendation only if satisfied the person may have a mental illness and it is clinically appropriate for the person to receive treatment and care for the person's mental illness in an authorised mental health service.
- (4) For subsection (2)(b), the administrator of an authorised mental health service may, in the approved form, consent to the person remaining in an inpatient unit of the authorised mental health service to receive treatment and care for the person's mental illness.
- (5) The administrator may consent only if satisfied—
 - (a) the authorised mental health service has capacity to provide treatment and care for the person's mental illness; and
 - (b) for an authorised mental health service that is not a high security unit—that providing the treatment and care would not pose an unreasonable risk to the safety of the person or others having regard to—

-
- (i) the person’s mental state and psychiatric history; 1
and 2
- (ii) the person’s treatment and care needs; and 3
- (iii) the security requirements for the person. 4
- (6) For subsection (2)(c), the custodian of the person must, in the 5
approved form, consent to the person remaining in an 6
inpatient unit of the authorised mental health service to 7
receive treatment and care for the person’s mental illness. 8
- (7) However, subsection (6) does not apply if the custodian is 9
satisfied that providing the treatment and care would pose an 10
unreasonable risk to the safety of the person or others having 11
regard to the security requirements for the person. 12
- (8) The authorised doctor may detain the person, under the order, 13
in the authorised mental health service for the period, of not 14
more than 7 days, reasonably necessary to obtain an 15
administrator consent and custodian consent for the person. 16
- (9) When a person mentioned in subsection (1)(c)(i) starts 17
receiving treatment and care for the person’s mental illness as 18
a classified patient in the inpatient unit of the authorised 19
mental health service— 20
- (a) if the category of the person’s treatment authority, 21
forensic order (mental health) or treatment support order 22
is community—the category is changed to inpatient; and 23
- (b) if limited community treatment has been authorised for 24
the person by an authorised doctor under section 52, 57, 25
209, 212 or 216—the authorisation is revoked; and 26
- (c) if limited community treatment has been approved or 27
ordered by the Mental Health Court or tribunal—the 28
approval or order is of no effect while the person is 29
receiving treatment and care in the inpatient unit. 30
- (10) Also, as soon as practicable after the person remains in the 31
inpatient unit of the authorised mental health service to 32
receive treatment and care for the person’s mental illness, the 33
authorised doctor must— 34
-

[s 75]

- (a) tell the person of the making of the recommendation under subsection (2)(a); and 1
2
- (b) explain its effect to the person; and 3
- (c) give the person a copy of the recommendation, if requested. 4
5
- (11) Subsection (10)(c) does not apply if the authorised doctor considers giving the copy may adversely affect the health and wellbeing of the person. 6
7
8
- (12) In this section— 9
- administrator consent* means consent given under subsection (4). 10
11
- custodian*, of a person, means the custodian of the person immediately before the making of an examination order or a court examination order for the person. 12
13
14
- custodian consent* means consent given under subsection (6). 15

Part 4 Requirements applying when person in custody becomes classified patient

16
17
18

Note— 19

See chapter 15, part 2 for the suspension of criminal proceedings against a person who becomes a classified patient. 20
21

75 Notice and explanation to person in custody who becomes classified patient

22
23

If a person in custody becomes a classified patient (involuntary) or classified patient (voluntary), an authorised doctor must explain to the person how this Act applies to the person. 24
25
26
27

76	Notice to chief psychiatrist of person in custody becoming classified patient	1 2
	As soon as practicable after a person in custody becomes a classified patient, the administrator of the authorised mental health service to which the person is transported must give the chief psychiatrist written notice that the person is a classified patient.	3 4 5 6 7
77	Notice to tribunal of minor in custody becoming classified patient in high security unit	8 9
	(1) This section applies if a person in custody who is a minor becomes a classified patient in a high security unit.	10 11
	(2) As soon as practicable after the minor becomes a classified patient, the administrator of the high security unit must give the tribunal written notice that the minor has been admitted to the high security unit.	12 13 14 15
	(3) If the minor stops being detained in the high security unit, the administrator of the high security unit must, as soon as practicable, give the tribunal written notice of that fact.	16 17 18
78	Examination of classified patient under s 201	19
	In examining a classified patient under section 201, the authorised doctor examining the patient must consider whether it is clinically appropriate for the patient to receive treatment and care for the patient’s mental illness in an inpatient unit of an authorised mental health service.	20 21 22 23 24
	<i>Note—</i>	25
	See section 81 for the requirement to give notice to the chief psychiatrist if the authorised doctor decides it is not clinically appropriate.	26 27
79	Classified patient (involuntary) may become classified patient (voluntary)	28 29
	(1) This section applies to—	30

[s 79]

- (a) a classified patient (involuntary) who is subject to a recommendation for assessment, if the assessment period for the patient ends and a treatment authority is not made for the patient; or
 - (b) a classified patient (involuntary) who is subject to a treatment authority, forensic order (mental health) or treatment support order, if the authority or order is revoked.
- (2) Despite subsection (1)(b), this section does not apply if the tribunal—
 - (a) on revoking the forensic order (mental health), makes either of the following for the patient—
 - (i) a treatment support order under section 448;
 - (ii) a treatment authority under section 449(1)(b); or
 - (b) on revoking the treatment support order, makes a treatment authority under section 449(1)(b) for the patient.
- (3) The person may be detained in an inpatient unit of an authorised mental health service as a classified patient (voluntary) if—
 - (a) an authorised doctor or authorised mental health practitioner is satisfied—
 - (i) the person has, or may have, a mental illness; and
 - (ii) it is clinically appropriate for the person to receive treatment and care for the person’s mental illness in an inpatient unit of an authorised mental health service; and
 - (b) the person consents to receiving treatment and care for the person’s mental illness in an inpatient unit of an authorised mental health service.
- (4) The person may withdraw consent under subsection (3)(b) at any time.

<i>Note—</i>	1
If the person withdraws consent, see sections 80 and 83.	2
(5) Subsection (4) does not prevent a treatment authority being made under chapter 2 for the person.	3 4
80 Notice to chief psychiatrist if classified patient (voluntary) withdraws consent	5 6
(1) This section applies if a person withdraws consent, under section 67(4) or 79(4), to receiving treatment and care for the person’s mental illness in an inpatient unit of an authorised mental health service.	7 8 9 10
(2) As soon as practicable after the person withdraws consent, an authorised doctor must give the chief psychiatrist written notice of the person’s withdrawal of consent.	11 12 13
<i>Note—</i>	14
See section 83 for the return of the classified patient to custody.	15
Part 5 Return to custody, or release from detention in authorised mental health service, of classified patient	16 17 18 19
81 Notice to chief psychiatrist of notice event	20
(1) This section applies if any of the following happens (each a <i>notice event</i>)—	21 22
(a) for a person in custody who has become a classified patient (involuntary) due to a recommendation for assessment—	23 24 25
(i) the assessment period for the person ends and a treatment authority is not made for the person; and	26 27

(ii)	the person does not become a classified patient (voluntary) under section 79;	1 2
(b)	for a person in custody who has become a classified patient (involuntary) due to a treatment authority, forensic order (mental health) or treatment support order—	3 4 5 6
(i)	the authority or order is revoked; and	7
(ii)	the person does not become a classified patient (voluntary) under section 79;	8 9
(c)	for a person in custody who has become a classified patient to receive treatment and care for the patient’s mental illness—an authorised doctor is satisfied it is not, or is no longer, clinically appropriate for the person to receive treatment and care for the patient’s mental illness in an inpatient unit of an authorised mental health service.	10 11 12 13 14 15 16
(2)	As soon as practicable after the notice event happens, an authorised doctor must give the chief psychiatrist written notice of the notice event.	17 18 19
(3)	The notice must—	20
(a)	be in the approved form; and	21
(b)	if the notice is about a notice event mentioned in subsection (1)(c)—state the reasons the authorised doctor is satisfied under that subsection.	22 23 24
(4)	For a notice about a notice event mentioned in subsection (1)(a) or (b), the authorised doctor must—	25 26
(a)	tell the classified patient of the notice; and	27
(b)	explain its effect to the classified patient.	28
82	Chief psychiatrist may decide to return classified patient to place of custody	29 30
(1)	The chief psychiatrist, on receiving a notice about a notice event mentioned in section 81(1)(c), may decide—	31 32

-
- | | | |
|-----------|--|----------------------|
| (a) | it is not clinically appropriate for the classified patient to receive treatment and care for the patient’s mental illness in an inpatient unit of an authorised mental health service; and | 1
2
3
4 |
| (b) | the classified patient should be returned under section 83 to a place of custody. | 5
6 |
| (2) | Also, the chief psychiatrist may, on the chief psychiatrist’s own initiative, decide— | 7
8 |
| (a) | it is not clinically appropriate for a classified patient to receive treatment and care for the patient’s mental illness in an inpatient unit of an authorised mental health service; and | 9
10
11
12 |
| (b) | the classified patient should be returned under section 83 to a place of custody. | 13
14 |
| (3) | As soon as practicable after the chief psychiatrist makes a decision under subsection (1) or (2), the chief psychiatrist must give the administrator of the classified patient’s treating health service written notice of the decision. | 15
16
17
18 |
| (4) | As soon as practicable after receiving a notice under subsection (3), an authorised doctor for the classified patient’s treating health service must— | 19
20
21 |
| (a) | tell the classified patient of the decision; and | 22 |
| (b) | explain its effect to the classified patient. | 23 |
| 83 | Return of classified patient to custody | 24 |
| (1) | This section applies if any of the following happens (a <i>return event</i>)— | 25
26 |
| (a) | the chief psychiatrist receives notice of a notice event mentioned in section 81(1)(a) or (b) about a classified patient; | 27
28
29 |
| (b) | the chief psychiatrist decides under section 82(1) or (2) that a classified patient should be returned to a place of custody; | 30
31
32 |
-

- (c) the chief psychiatrist receives notice under section 80 that a classified patient (voluntary) has withdrawn consent to receiving treatment and care for the person's mental illness in an inpatient unit of an authorised mental health service and a treatment authority has not been made for the person.
- (2) As soon as practicable after the return event happens, the chief psychiatrist must give written notice to the following persons of the return event—
- (a) the custodian who gave the custodian consent for the person (the *first custodian*);
- (b) if the person is charged with an offence or awaiting sentence on conviction for an offence—the chief executive (justice).
- (3) Within 1 day after receiving the notice, the first custodian must make arrangements for an authorised person to transport the person from the authorised mental health service—
- (a) to a place in which the person will be in the first custodian's custody; or
- (b) if the first custodian agrees with another person (the *second custodian*) that the person should be transported to a place in which the person will be in the second custodian's custody—to the place in which the person will be in the second custodian's custody.
- (4) An authorised person may transport the person from the authorised mental health service to the place in which the person will be in the custody of the first custodian or second custodian.
- (5) The person stops being a classified patient when the person is discharged from the authorised mental health service into the custody of the first custodian or second custodian.
- (6) As soon as practicable after the chief executive (justice) receives a notice under subsection (2)(b) about a person, the chief executive (justice) must give the following persons a copy of the notice—

	(a) the registrar of the court in which the proceeding for the offence has been brought;	1 2
	(b) the prosecuting authority for the offence;	3
	(c) if the person is a child within the meaning of the <i>Youth Justice Act 1992</i> —the chief executive (youth justice).	4 5
84	Person stops being classified patient if Mental Health Court makes decision on reference	6 7
	If a reference in relation to a person is made to the Mental Health Court, the person stops being a classified patient in relation to the reference when the Mental Health Court makes a decision on the reference.	8 9 10 11
85	Release of classified patient	12
	(1) This section applies if an event happens that means there is no longer a reason for a classified patient to be in lawful custody if the person were not a classified patient (a <i>release event</i>).	13 14 15
	<i>Examples of when there is no longer a reason for a classified patient to be in lawful custody—</i>	16 17
	• the person would be in lawful custody on a charge of an offence, but the person has been granted bail or the prosecution of the charge is discontinued	18 19 20
	• the person would be in lawful custody awaiting sentence on conviction for an offence, but the person has been sentenced to a term of imprisonment which has been suspended or an order of imprisonment has not been made	21 22 23 24
	• the person would be in lawful custody serving a term of imprisonment, but the person has been released on parole or the term of imprisonment ends	25 26 27
	(2) Within 1 day after the release event happens, the person’s custodian must give the administrator of the person’s treating health service written notice of the release event.	28 29 30
	(3) Immediately after the administrator receives the notice—	31
	(a) the person stops being a classified patient; and	32

[s 86]

	(b) the administrator must not detain the person in the treating health service as a classified patient.	1 2
	(4) As soon as practicable after receiving the notice, the administrator must give the chief psychiatrist written notice of the release event.	3 4 5
	(5) Subsection (3) does not limit a power under this Act to detain a person in an authorised mental health service other than as a classified patient.	6 7 8
Chapter 4	Psychiatrist reports for serious offences	9 10
Part 1	Preliminary	11
86	Purpose of ch 4	12
	The purpose of this chapter is to provide for the preparation of a psychiatrist report and, in particular circumstances, a second psychiatrist report, about a person charged with a serious offence, other than an offence against a law of the Commonwealth.	13 14 15 16 17
87	Definitions for ch 4	18
	In this chapter—	19
	<i>psychiatrist report</i> , about a person in relation to a charge of a serious offence, means a report prepared by an authorised psychiatrist stating whether the authorised psychiatrist considers the person—	20 21 22 23
	(a) may have been of unsound mind when the serious offence was allegedly committed; or	24 25

-
- (b) may be unfit for trial. 1
second psychiatrist report see section 100(2). 2

Part 2 Psychiatrist report on request 3

88 Application of pt 2 4

- (1) This part applies to a person charged with a serious offence, 5
other than an offence against a law of the Commonwealth, 6
who, at the time of the alleged commission of the offence or 7
any time after the alleged commission of the offence but 8
before a court makes a final decision in the proceeding for the 9
offence, is subject to— 10
- (a) a treatment authority; or 11
(b) a forensic order under which a stated authorised mental 12
health service is responsible for the person; or 13
(c) a treatment support order. 14
- (2) For subsection (1), it is immaterial if the authority or order is 15
revoked before the court makes a final decision in the 16
proceeding for the offence. 17

89 Administrator must explain effect of request 18

- (1) As soon as practicable after the administrator of the person's 19
treating health service becomes aware this part applies to the 20
person, the administrator must— 21
- (a) tell the person a request may be made under this part for 22
a psychiatrist report about the person in relation to the 23
charge of the serious offence; and 24
(b) explain to the person the effect of a request if made. 25
- (2) If the person is a minor, the administrator must also explain 26
the effect of a request to 1 or more of the minor's parents. 27

[s 90]

- (3) Subsection (2) does not apply if explaining the effect to 1 or more of the minor's parents does not appear to be in the minor's best interests. 1
2
3

90 Request for psychiatrist report 4

The following persons may ask the chief psychiatrist for a psychiatrist report about the person in relation to the charge of the serious offence— 5
6
7

- (a) the person; 8
(b) the person's nominated support person, if the nominated support person believes the request is in the person's best interests; 9
10
11
(c) a personal guardian authorised to make decisions for the person under the *Guardianship and Administration Act 2000*, if the request is within the guardian's authority; 12
13
14
(d) an attorney authorised to make decisions for personal matters for the person under the *Powers of Attorney Act 1998*, if the request is within the attorney's authority; 15
16
17
(e) a parent of the person, if the person is a minor; 18
(f) the person's lawyer, if the person has given instructions to the lawyer to make the request. 19
20

91 Direction to prepare psychiatrist report 21

- (1) Within 7 days after receiving a request under section 90, the chief psychiatrist must direct the administrator of the person's treating health service to arrange for an authorised psychiatrist to prepare a psychiatrist report about the person in relation to the charge of the serious offence. 22
23
24
25
26
(2) However, the chief psychiatrist may decide not to give the direction if a direction to prepare a psychiatrist report about the person in relation to the serious offence has been previously revoked under section 98. 27
28
29
30

(3)	The direction may include a direction for the report to be prepared about the person also in relation to an associated offence.	1 2 3
(4)	If the chief psychiatrist does not give a direction under subsection (1), the chief psychiatrist must give the person making the request a written statement explaining the reasons for not giving the direction.	4 5 6 7
Part 3	Psychiatrist report on chief psychiatrist's own initiative	8 9
92	Application of pt 3	10
	This part applies to a person charged with a serious offence, other than an offence against a law of the Commonwealth.	11 12
93	Direction to prepare psychiatrist report	13
(1)	The chief psychiatrist may, on the chief psychiatrist's own initiative—	14 15
(a)	direct the administrator of the person's treating health service to arrange for an authorised psychiatrist to prepare a psychiatrist report about the person in relation to the charge of the serious offence; or	16 17 18 19
(b)	direct an authorised psychiatrist to prepare a psychiatrist report about the person in relation to the charge of the serious offence.	20 21 22
(2)	The chief psychiatrist may give the direction only if satisfied—	23 24
(a)	the person may have a mental condition; and	25
(b)	the person—	26

[s 94]

	(i) may have been of unsound mind when the serious offence was allegedly committed; or	1 2
	(ii) may be unfit for trial; and	3
	(c) the preparation of the psychiatrist report is in the public interest.	4 5
(3)	The direction may include a direction for the report to be prepared about the person also in relation to an associated offence.	6 7 8
94	Notice of direction	9
(1)	As soon as practicable after giving the direction, the chief psychiatrist must give the following persons written notice of the direction—	10 11 12
	(a) the person;	13
	(b) if an authorised mental health service is responsible for the person—the administrator of the service.	14 15
(2)	A notice given to a person under subsection (1)(a) must include information about a support person accompanying the person for the examination under section 97.	16 17 18
Part 4	Preparation of psychiatrist reports	19 20
	<i>Note—</i>	21
	See chapter 15, part 2 for the suspension of criminal proceedings against a person in relation to whom a direction is given for a psychiatrist report to be prepared.	22 23 24

95	Authorised psychiatrist must prepare psychiatrist report	1
(1)	An authorised psychiatrist who is required under section 91(1) or 93(1)(a), or directed under section 93(1)(b), to prepare a psychiatrist report about a person in relation to a charge of a serious offence must prepare the report within 60 days after the requirement is made or the direction given.	2 3 4 5 6
(2)	The chief psychiatrist may extend the period mentioned in subsection (1) to not more than 90 days after the requirement is made or the direction given.	7 8 9
(3)	In preparing the psychiatrist report, the authorised psychiatrist must—	10 11
(a)	examine the person; and	12
(b)	obtain and consider health records for the person relevant to the examination of the person; and	13 14
(c)	consider any information obtained under section 96.	15
(4)	Also, the authorised psychiatrist may obtain and consider any other information the authorised psychiatrist considers relevant to preparing the psychiatrist report.	16 17 18
(5)	The psychiatrist report must include information about the following—	19 20
(a)	the person’s mental state and, to the extent practicable, the person’s mental state when the serious offence was allegedly committed;	21 22 23
(b)	whether the authorised psychiatrist considers the person was of unsound mind when the serious offence was allegedly committed;	24 25 26
(c)	whether the authorised psychiatrist considers the person is fit for trial;	27 28
(d)	if the authorised psychiatrist considers the person is unfit for trial—whether the authorised psychiatrist considers the unfitness for trial is permanent.	29 30 31

[s 96]

- (6) Also, the psychiatrist report may include information about the matters mentioned in subsection (5) in relation to an associated offence. 1
2
3
- (7) The authorised psychiatrist must give the chief psychiatrist a copy of the report as soon as practicable after it is prepared. 4
5

96 Information from prosecuting authority 6

- (1) This section applies to— 7
 - (a) an administrator of an authorised mental health service who is directed under section 91(1) or 93(1)(a) to arrange for the preparation of a psychiatrist report about a person in relation to a charge of a serious offence; or 8
9
10
11
 - (b) an authorised psychiatrist who is required under section 91(1) or 93(1)(a), or directed under section 93(1)(b), to prepare a psychiatrist report about a person in relation to a charge of a serious offence. 12
13
14
15
- (2) The administrator or authorised psychiatrist may ask the prosecuting authority for the serious offence or associated offence to which the report relates to give the administrator or authorised psychiatrist copies of the documents mentioned in schedule 3, definition *brief of evidence*, paragraph (a) relating to the offence. 16
17
18
19
20
21
- (3) The prosecuting authority must comply with the request as soon as practicable. 22
23
- (4) Subsection (2) does not apply to information contained in a document if the prosecuting authority considers— 24
25
 - (a) giving the information could reasonably be expected to— 26
27
 - (i) prejudice the investigation of a contravention or possible contravention of a law in a particular case; 28
29
30
 - (ii) prejudice an investigation under the *Coroners Act 2003*; or 31
32

-
- (iii) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of a law, to be ascertained; or
- (iv) endanger a person's life, health or safety; or
- (v) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of a law; and
- (b) it would not be in the public interest to give the information.
- (5) Also, subsection (2) does not apply to information, contained in a document—
- (a) that is sensitive evidence under the Criminal Code, section 590AF; or
- (b) that the prosecution would be prevented under another Act or law from giving to the accused person or a lawyer acting for the accused person during a proceeding for the offence; or
- (c) identifying witnesses to the alleged commission of the offence; or
- (d) consisting of contact details for witnesses to the alleged commission of the offence.
- (6) The duty imposed on the prosecuting authority to comply with the request applies only to documents in the possession of the prosecuting authority or to which the prosecuting authority has access.
- (7) In complying with the request, the prosecuting authority may delete from a copy of a document given to the administrator or authorised psychiatrist any information mentioned in subsection (4) or (5).
- Example—*
- If a document includes the name of a witness to the alleged commission of the offence, or information from which the witness could be

[s 97]

identified, the prosecuting authority may delete the name or information 1
from a copy of the document given to the administrator or authorised 2
psychiatrist. 3

97 Support person 4

- (1) A person being examined for a psychiatrist report may be 5
accompanied by a support person, including, for example, a 6
nominated support person, lawyer or personal guardian. 7
- (2) A support person must not interfere with the examination. 8

**98 Person must participate in examination in good 9
faith—report on request** 10

- (1) If a psychiatrist report about a person is being prepared on a 11
request under section 90, the person and any support person 12
must participate in an examination for the psychiatrist report 13
in good faith. 14

Examples of participating in an examination in good faith— 15

- attending appointments in relation to the examination 16
- answering questions during the examination 17
- allowing access to the person's health records 18

- (2) If the authorised psychiatrist preparing the psychiatrist report 19
is satisfied the person or support person is not participating in 20
the examination in good faith, the authorised psychiatrist must 21
give the administrator of the authorised mental health service 22
who appointed the psychiatrist written notice of the 23
psychiatrist's belief. 24

- (3) If the administrator receives a notice under subsection (2), the 25
administrator may decide to revoke the direction to prepare 26
the psychiatrist report. 27

- (4) However, before revoking the direction, the administrator 28
must— 29

- (a) give the person the subject of the examination a written 30
notice (*a show cause notice*) stating the following— 31

(i)	that the administrator proposes to revoke the direction to prepare the psychiatrist report (the <i>proposed action</i>);	1 2 3
(ii)	the grounds for the proposed action;	4
(iii)	the facts and circumstances forming the basis for the grounds;	5 6
(iv)	that the person may make submissions about the show cause notice to the administrator;	7 8
(v)	a day and time within which submissions must be made; and	9 10
(b)	consider any submissions given in response to the show cause notice.	11 12
(5)	If the administrator revokes the direction, the administrator must give the following persons written notice of the revocation—	13 14 15
(a)	the person the subject of the examination;	16
(b)	the person who made the request under section 90;	17
(c)	the chief psychiatrist.	18
99	Person must attend examination—report on chief psychiatrist’s initiative	19 20
(1)	If a psychiatrist report about a person is being prepared on the chief psychiatrist’s own initiative under section 93, the person must attend for an examination.	21 22 23
(2)	If the person is not an inpatient of an authorised mental health service, the chief psychiatrist must give the person a written notice directing the person to attend at a stated authorised mental health service within a stated period, of not more than 28 days, after the notice is given.	24 25 26 27 28
	<i>Note—</i>	29
	See chapter 11, part 6, division 3 for the powers that may be used in relation to a person who does not comply with a direction under subsection (2).	30 31 32

[s 100]

100	Second psychiatrist report	1
(1)	This section applies if the chief psychiatrist considers the matters in a psychiatrist report about a person in relation to a charge of a serious offence (the <i>first psychiatrist report</i>) require further examination, including, for example, because of the complexity of the matters in the report.	2 3 4 5 6
(2)	The chief psychiatrist may—	7
(a)	direct the administrator of the person’s treating health service to arrange for an authorised psychiatrist to prepare another psychiatrist report (a <i>second psychiatrist report</i>) about the person in relation to the charge of the serious offence; or	8 9 10 11 12
(b)	direct an authorised psychiatrist to prepare a psychiatrist report (also a <i>second psychiatrist report</i>) about the person in relation to the charge of the serious offence.	13 14 15
(3)	The direction to prepare the second psychiatrist report must be given within 7 days after the chief psychiatrist receives the first psychiatrist report.	16 17 18
(4)	The direction to prepare the second psychiatrist report may include a direction for the second psychiatrist report to be prepared about the person also in relation to an associated offence.	19 20 21 22
(5)	Sections 95 to 99 apply to the second psychiatrist report as if a reference in the sections to a psychiatrist report were a reference to the second psychiatrist report.	23 24 25

Part 5	References by chief psychiatrist	26 27
---------------	---	----------

101	Reference by chief psychiatrist to Mental Health Court	28
(1)	This section applies if—	29

-
- (a) a psychiatrist report, or second psychiatrist report, about a person in relation to a charge of a serious offence has been prepared; and
- (b) the chief psychiatrist is satisfied—
- (i) the person may have been of unsound mind when the serious offence was allegedly committed or may be unfit for trial; and
- (ii) having regard to the report and the protection of the community, there is a compelling reason in the public interest for the person’s mental state in relation to the serious offence to be referred to the Mental Health Court; and
- (c) the person’s mental state in relation to the serious offence has not been referred to the Mental Health Court under section 110.
- (2) The chief psychiatrist may, in the way set out in section 111, refer the matter of the person’s mental state in relation to the serious offence to the Mental Health Court.
- (3) The reference must be made—
- (a) for a psychiatrist report prepared on a request under section 90 and if a second psychiatrist report is not directed under section 100—within 28 days after a copy of the psychiatrist report is given to the person making the request; or
- (b) for a psychiatrist report prepared on the chief psychiatrist’s own initiative under section 93 and if a second psychiatrist report is not directed under section 100—within 28 days after the chief psychiatrist receives a copy of the psychiatrist report; or
- (c) if a second psychiatrist report is prepared under section 100—within 28 days after the chief psychiatrist receives a copy of the second psychiatrist report.
- (4) The reference may include a reference of the person’s mental state in relation to an associated offence.

[s 102]

- (5) The chief psychiatrist may, within the period mentioned in subsection (3), extend the period to not more than 4 months after the period would otherwise end if the chief psychiatrist considers the person is unfit for trial but may be fit for trial within the extended period.

Part 6 **Miscellaneous** 6

102 **Copies of reports** 7

- (1) The chief psychiatrist must give a copy of a psychiatrist report, or second psychiatrist report, about a person in relation to a charge of a serious offence to—
- (a) the person; and
 - (b) the administrator of the person’s treating health service; and
 - (c) for a psychiatrist report prepared on a request under section 90 (the *first psychiatrist report*) or a second psychiatrist report relating to the first psychiatrist report—the person who made the request.
- (2) However, for subsection (1)(a), if the chief psychiatrist is satisfied that giving a copy of a psychiatrist report, or second psychiatrist report, to the person the subject of the report may adversely affect the person’s health and wellbeing, the chief psychiatrist may instead give a copy of the report to another person who the chief psychiatrist considers has a sufficient interest in the person’s health and wellbeing.
- Examples of a person who may have a sufficient interest in the person’s health and wellbeing—*
- the person’s nominated support person, a lawyer acting for the person, or the person’s personal guardian
- (3) A psychiatrist report must be given under subsection (1)—

(a)	if a second psychiatrist report is not directed—within 7 days after receiving the psychiatrist report; or	1 2
(b)	if a second psychiatrist report is directed—within 7 days after receiving the second psychiatrist report.	3 4
(4)	A second psychiatrist report must be given under subsection (1) within 7 days after receiving the second psychiatrist report.	5 6 7
(5)	If the matter of the person’s mental state relating to the serious offence is referred to the Mental Health Court, the chief psychiatrist must give a copy of a psychiatrist report, or second psychiatrist report, about the person to the Mental Health Court.	8 9 10 11 12
(6)	Subject to subsection (2) and (5), the chief psychiatrist must not give a copy of a psychiatrist report, or second psychiatrist report, to anyone else without the consent of—	13 14 15
(a)	the person the subject of the report; or	16
(b)	the personal guardian or attorney of the person the subject of the report, if giving the consent is within the guardian’s or attorney’s authority.	17 18 19
103	Chapter stops applying to person if prosecution for offence discontinued	20 21
	If action is taken under this chapter in relation to a person charged with a serious offence or associated offence and the prosecution of the person for the offence is discontinued, this chapter stops applying to the person in relation to the offence.	22 23 24 25
104	Application of chapter to person with intellectual disability	26 27
	If a person has, or may have, an intellectual disability, without limiting the application of this chapter to the person, the chapter also applies to the person as if—	28 29 30

[s 104]

- | | | |
|-----|--|----------------------------|
| (a) | a reference to an authorised mental health service were a reference to the forensic disability service; and | 1
2 |
| (b) | a reference to the chief psychiatrist were a reference to the director of forensic disability; and | 3
4 |
| (c) | a reference to a psychiatrist report, or second psychiatrist report, were a reference to a report prepared by a senior practitioner appointed under the Forensic Disability Act after an assessment of the person; and | 5
6
7
8 |
| (d) | a reference to the administrator of a person's treating health service were a reference to the administrator of the forensic disability service; and | 9
10
11 |
| (e) | a reference to an authorised psychiatrist were a reference to a senior practitioner under the Forensic Disability Act; and | 12
13
14 |
| (f) | a reference in section 93(2)(a) to the chief psychiatrist being satisfied that a person may have a mental condition were a reference to the director of forensic disability being satisfied that a person may have an intellectual disability; and | 15
16
17
18
19 |
| (g) | a reference in section 99(2) to an inpatient of an authorised mental health service were a reference to a forensic disability client who is subject to a forensic order (disability) that has a category of inpatient. | 20
21
22
23 |

Chapter 5	Mental Health Court references	1
		2
	<i>Note—</i>	3
	See chapter 16, part 1 in relation to the procedure for proceedings in the Mental Health Court.	4 5
Part 1	Preliminary	6
105	Purpose of ch 5	7
	The purpose of this chapter is to provide for—	8
	(a) the making of references to the Mental Health Court in relation to the mental state of persons charged with serious offences; and	9 10 11
	(b) the hearing of references—	12
	(i) made under chapter 4, or this chapter, in relation to persons charged with serious offences; or	13 14
	(ii) made under chapter 6 in relation to persons charged with indictable offences; and	15 16
	(c) the decisions the court may make on a reference, including the making of a forensic order or treatment support order; and	17 18 19
	(d) the admissibility and use of evidence, victim impact statements and other matters.	20 21
106	Definitions for ch 5	22
	In this chapter—	23
	<i>associated offence</i> see section 107.	24
	<i>diminished responsibility</i> see section 108.	25
	<i>offence</i> , in relation to a reference, means each alleged offence mentioned in the notice of the reference filed under section	1 2

[s 107]

111, 176 or 184.	3
<i>reference</i> , in relation to a person, means a reference to the Mental Health Court, made under section 101, 110, 175 or 183, of the person's mental state relating to an offence the person is alleged to have committed.	4 5 6 7
<i>unsound mind</i> see section 109.	8
107 Meaning of <i>associated offence</i>	9
An <i>associated offence</i> , in relation to an indictable offence with which a person is charged, means an offence, other than an offence against a law of the Commonwealth, that the person is alleged to have committed at or about the same time as the indictable offence.	10 11 12 13 14
108 Meaning of <i>diminished responsibility</i>	15
A person is of <i>diminished responsibility</i> if the person has a state of abnormality of mind described in the Criminal Code, section 304A(1).	16 17 18
109 Meaning of <i>unsound mind</i>	19
(1) <i>Unsound mind</i> means—	20
(a) a state of mental disease or natural mental infirmity described in the Criminal Code, section 27(1); or	21 22
(b) a state of mind described in the Criminal Code, section 28(1) for which the Criminal Code, section 27(1) applies to a person.	23 24 25
(2) However, <i>unsound mind</i> does not include a state of mind resulting, to any extent, from intentional intoxication or stupefaction alone or in combination with some other agent at or about the time of the alleged offence.	26 27 28 29

Part 2	Making of references by particular persons	1 2
110	When reference may be made	3
(1)	This section applies if—	4
(a)	a person is charged with a serious offence, other than an offence against a law of the Commonwealth; and	5 6
(b)	a relevant person has reasonable cause to believe the person mentioned in paragraph (a)—	7 8
(i)	was of unsound mind when the offence was allegedly committed; or	9 10
(ii)	is unfit for trial.	11
(2)	This section also applies if—	12
(a)	a person is charged with the offence of murder; and	13
(b)	a relevant person has reasonable cause to believe the person mentioned in paragraph (a) was of diminished responsibility when the offence was allegedly committed.	14 15 16 17
(3)	The relevant person may, in the way set out in section 111, refer the matter of the person’s mental state in relation to the serious offence to the Mental Health Court.	18 19 20
(4)	A reference of a person’s mental state in relation to a serious offence may include a reference of the person’s mental state in relation to an associated offence.	21 22 23
(5)	In this section—	24
	<i>relevant person</i> , in relation to a person alleged to have committed an offence, means any of the following—	25 26
(a)	the person;	27
(b)	the person’s lawyer;	28
(c)	the director of public prosecutions.	29

[s 111]

<i>Note—</i>	1
A reference in relation to a person may also be made by the following—	2 3
• the chief psychiatrist or director of forensic disability under section 101	4 5
• a Magistrates Court under section 175	6
• the Supreme Court or District Court under section 183.	7

111 How reference is made 8

(1) A reference under section 110 in relation to a person is made by filing a notice of the reference in the approved form in the registry. 9
10
11

(2) The notice must state each offence in relation to which the person's mental state is referred. 12
13

(3) The notice must be accompanied by a copy of any psychiatrist report or other clinical report in relation to the person that is relevant to the reference and in the possession of the person making the reference. 14
15
16
17

Example— 18

a psychiatrist report prepared under chapter 4 19

(4) Subsection (3) applies even if giving the copy of the report would disclose information adverse to the case of the person. 20
21

(5) The person who made the reference may amend it with the leave of the Mental Health Court. 22
23

Example of an amendment of the reference— 24

including another offence in the reference 25

Part 3	Proceedings for references	1
	<i>Note—</i>	2
	See chapter 15, part 2 for the suspension of criminal proceedings against a person in relation to whom a reference is made to the Mental Health Court.	3 4 5
Division 1	Preliminary	6
112	Application of pt 3	7
	This part applies to a reference in relation to a person made under section 101, 110, 175 or 183.	8 9
Division 2	Notice requirements etc.	10
113	Notice of reference	11
(1)	The registrar must, as soon as practicable after the reference is made, give each of the following persons written notice of the reference and of the suspension of the proceeding for the offence under chapter 15, part 2—	12 13 14 15
(a)	the person the subject of the reference or, if known, the person’s lawyer;	16 17
(b)	the director of public prosecutions;	18
(c)	the chief psychiatrist;	19
(d)	the chief executive (justice);	20
(e)	the director of forensic disability;	21
(f)	if the person the subject of the reference is a child within the meaning of the <i>Youth Justice Act 1992</i> —the chief executive (youth justice);	22 23 24

[s 114]

- (g) if known, any nominated support person, personal guardian or attorney for the person the subject of the reference. 1
2
3
- (2) The chief executive (justice) must, as soon as practicable after receiving the notice mentioned in subsection (1), give both of the following persons written notice of the reference and of the suspension of the proceeding for the offence under chapter 15, part 2— 4
5
6
7
8
- (a) the registrar of the court in which the proceeding for the offence has been brought; 9
10
- (b) if the prosecuting authority for the offence is not the director of public prosecutions—the prosecuting authority for the offence. 11
12
13
- 114 Parties to proceeding** 14
- (1) The parties to the proceeding for the reference are— 15
- (a) the person the subject of the reference; and 16
- (b) the director of public prosecutions; and 17
- (c) the chief psychiatrist. 18
- (2) If the person has an intellectual disability— 19
- (a) the director of forensic disability may elect to be a party to the proceeding; and 20
21
- (b) if the director of forensic disability makes an election under paragraph (a), the chief psychiatrist may elect not to be a party to the proceeding. 22
23
24
- (3) An election made under subsection (2) by the director of forensic disability or the chief psychiatrist must be made by filing a notice in the registry. 25
26
27
- 115 Notice of hearing** 28
- (1) The registrar must give each of the following persons written notice of the hearing of the proceeding for the reference— 29
30

-
- (a) each party to the proceeding; 1
 - (b) if an authorised mental health service is responsible for 2
the person the subject of the reference—the 3
administrator of the service; 4
 - (c) if the forensic disability service is responsible for the 5
person the subject of the reference—the administrator of 6
the service; 7
 - (d) if the person the subject of the reference is in lawful 8
custody—the person’s custodian. 9
- (2) The registrar must give the notice at least 7 days before the 10
hearing. 11
 - (3) The notice must state the following— 12
 - (a) the time and place of the hearing; 13
 - (b) the nature of the hearing; 14
 - (c) the rights at the hearing of the person the subject of the 15
reference. 16

Division 3 Particular decisions 17

116 Decision about unsoundness of mind and diminished 18 responsibility 19

- (1) On hearing the proceeding for the reference, the Mental 20
Health Court must decide— 21
 - (a) whether the person was of unsound mind when the 22
offence was allegedly committed; and 23
 - (b) if the person is alleged to have committed the offence of 24
murder and the court decides the person was not of 25
unsound mind when the offence was allegedly 26
committed—whether the person was of diminished 27
responsibility when the offence was allegedly 28
committed. 29
- (2) This section is subject to section 117. 30

[s 117]

- 117 Substantial dispute about whether person committed offence** 1
2
- (1) The Mental Health Court may not make a decision under 3
section 116(1)(a) or (b) if the court is satisfied there is a 4
substantial dispute about whether the person committed the 5
offence as particularised (the *disputed offence*). 6
- (2) However, subsection (1) does not apply if the dispute exists 7
only because of 1 or both of the following— 8
- (a) the person’s mental condition; 9
- (b) the operation of the Criminal Code, section 304, 304A 10
or 304B. 11
- (3) If elements of the disputed offence are elements of another 12
offence (the *alternative offence*) and there is not a substantial 13
dispute about whether the person committed the alternative 14
offence, subsection (1) does not prevent the court making a 15
decision under section 116(1)(a) for the alternative offence. 16
- (4) If the court decides the person was of unsound mind when the 17
alternative offence was committed, the proceeding against the 18
person for the disputed offence is discontinued. 19
- (5) In this section— 20
- particularised*, for an offence with which a person is charged, 21
means particularised in the bench charge sheet, complaint, 22
notice to appear or indictment containing the charge against 23
the person. 24
- 118 Decision about fitness for trial** 25
- (1) This section applies if— 26
- (a) the Mental Health Court decides the person was not of 27
unsound mind when the offence was allegedly 28
committed; or 29
- (b) because of section 117, the court may not decide 30
whether the person was of unsound mind when the 31
offence was allegedly committed. 32

-
- (2) The court must decide whether the person is fit for trial. 1
 - (3) If the court decides the person is unfit for trial, the court must also decide whether the unfitness for trial is permanent. 2
3
 - (4) This section does not apply if, under section 117(4), the proceeding against the person for the offence is discontinued. 4
5

Division 4 Procedural provisions 6

119 Unsound mind—discontinuance of proceeding 7

- (1) If the Mental Health Court decides the person was of unsound mind when the offence was allegedly committed— 8
9
 - (a) the proceeding against the person for the offence is discontinued; and 10
11
 - (b) further proceedings may not be taken against the person for the act or omission constituting the offence. 12
13
- (2) Despite the court’s decision, the person may elect to be tried for the offence. 14
15
- (3) The election must be made by giving the director of public prosecutions written notice of the election within 28 days after the person receives written notice of the court’s decision. 16
17
18
- (4) The director of public prosecutions must, within 7 days after receiving the notice of the person’s election, give written notice of the person’s election to— 19
20
21
 - (a) if an authorised mental health service is responsible for the person—the chief psychiatrist; or 22
23
 - (b) if the forensic disability service is responsible for the person—the director of forensic disability. 24
25
- (5) If a forensic order or treatment support order is made for the person under part 4, the order continues in force until a final decision is made in the proceeding against the person for the offence. 26
27
28
29

[s 120]

(6)	The director of public prosecutions must ensure the proceeding against the person for the offence is continued according to law within 28 days after receiving the notice of the person's election.	1 2 3 4
120	Diminished responsibility—discontinuance of proceeding	5 6
(1)	If the person was charged with the offence of murder and the Mental Health Court decides the person was of diminished responsibility when the offence was allegedly committed, the proceeding against the person for the offence of murder is discontinued.	7 8 9 10 11
(2)	However, the proceeding may be continued against the person for another offence constituted by the act or omission to which the proceeding for the offence of murder relates.	12 13 14
121	Temporary unfitness for trial—stay of proceeding	15
(1)	This section applies if the Mental Health Court decides the person is unfit for trial and the unfitness for trial is not permanent.	16 17 18
(2)	The proceeding for the offence is stayed until, on a review under chapter 12, part 6, the tribunal decides the person is fit for trial.	19 20 21
122	Permanent unfitness for trial—discontinuance of proceeding	22 23
	If the Mental Health Court decides the person is unfit for trial and the unfitness for trial is permanent—	24 25
(a)	the proceeding against the person for the offence is discontinued; and	26 27
(b)	further proceedings may not be taken against the person for the act or omission constituting the offence.	28 29

123	Fit for trial—continuation of proceeding	1
	If the Mental Health Court decides the person is fit for trial,	2
	the court must order that the proceeding against the person for	3
	the offence be continued according to law.	4
124	Related orders if person fit for trial	5
(1)	If the Mental Health Court orders that the proceeding against	6
	the person for the offence be continued, the court may order	7
	that—	8
(a)	either—	9
(i)	the person be remanded in custody and any bail	10
	granted under the <i>Bail Act 1980</i> for the person be	11
	revoked; or	12
(ii)	bail be granted, enlarged or varied under the <i>Bail</i>	13
	<i>Act 1980</i> for the person; or	14
(b)	the person be detained in a stated authorised mental	15
	health service until the person is—	16
(i)	granted bail under the <i>Bail Act 1980</i> ; or	17
(ii)	brought before a court for continuing the	18
	proceeding.	19
	<i>Note—</i>	20
	An order made under paragraph (b) is a type of judicial order. A	21
	judicial order does not authorise the provision of involuntary	22
	treatment and care to the person.	23
(2)	For subsection (1)(b), an authorised person may transport the	24
	person to—	25
(a)	an inpatient unit of the authorised mental health service	26
	stated in the order; or	27
(b)	for the continuation of the proceeding against the person	28
	for the offence—the court in which the proceeding is	29
	being heard.	30

[s 125]

Note—

For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.

- (3) The administrator of the authorised mental health service stated in the order may detain the person in the service under the order.
- (4) Also, subsection (5) applies if—
- (a) the court has made an order under subsection (1)(b) for the person; and
 - (b) for continuing the proceeding against the person for the offence, the person appears before the court in which the proceeding is being heard by remote conferencing while remaining at the authorised mental health service stated in the order; and
 - (c) the court does not grant the person bail under the *Bail Act 1980*.
- (5) The administrator of the authorised mental health service may detain the person in the service until the person is taken into custody.

Division 5 Withdrawal of particular references 20

125 Application of div 5 21

This division applies to a reference in relation to a person made under section 101 or 110. 22
23

126 Application to withdraw reference 24

- (1) At any time before the Mental Health Court decides the reference, the person who made the reference may apply to the court to withdraw the reference. 25
26
27
- (2) The application must be made by— 28
- (a) filing a notice in the approved form with the registrar; or 29

(b)	making an oral submission at the hearing of the proceeding for the reference.	1 2
127	Notices if application to withdraw filed	3
(1)	The registrar must—	4
(a)	within 7 days after the notice of the application to withdraw the reference is filed, give written notice of the application to the other parties to the proceeding; and	5 6 7
(b)	at least 7 days before the hearing of the application, give the parties written notice of the hearing of the application.	8 9 10
(2)	The notice of the hearing must state the following—	11
(a)	the time and place of the hearing;	12
(b)	the nature of the hearing;	13
(c)	the parties' rights to be represented at the hearing.	14
	<i>Note—</i>	15
	See section 681 in relation to representation at the hearing.	16
128	Decision on application	17
(1)	The Mental Health Court must grant the application or refuse to grant it.	18 19
(2)	However, the court may refuse to grant the application only if it considers the withdrawal of the reference would be contrary to the interests of justice.	20 21 22

[s 129]

Part 4	Forensic orders and treatment support orders	1 2
Division 1	Preliminary	3
129	Definition for pt 4	4
	In this part—	5
	<i>relevant unlawful act</i> , in relation to a reference, means the unlawful act or omission that constitutes the offence to which the reference relates.	6 7 8
130	Explanation about operation of forensic orders and treatment support orders	9 10
(1)	Under this part, the Mental Health Court may, on a reference in relation to a person, make the following types of orders—	11 12
(a)	a forensic order (mental health) or forensic order (disability)—see division 2;	13 14
(b)	a treatment support order—see division 3.	15
	<i>Note</i> —	16
	See section 151 for the matters authorised under a forensic order (mental health) or treatment support order. See section 152 for the matters authorised under a forensic order (disability).	17 18 19
(2)	A forensic order (mental health) operates in a way that is more restrictive of a person’s rights and liberties than a treatment support order.	20 21 22
	<i>Examples</i> —	23
1	The Mental Health Court may decide the category of a forensic order (mental health) is community only if the court considers there is not an unacceptable risk to the safety of the community.	24 25 26
2	The court may decide the category of a treatment support order is inpatient only if the court considers the person’s treatment and care needs, the safety and welfare of the person, or the safety of others, can not reasonably be met if the category of the order is community.	27 28 29 30

3	An authorised doctor may authorise treatment in the community for a person subject to a forensic order (mental health) only to the extent approved by the court or the tribunal.	1 2 3
4	An authorised doctor may authorise treatment in the community for a person subject to a treatment support order, subject only to the court or the tribunal deciding whether the authorised doctor may reduce the extent of treatment in the community received by the person.	4 5 6 7 8
5	Requirements imposed under a policy made by the chief psychiatrist may be more onerous for a person subject to a forensic order (mental health) than a person subject to a treatment support order.	9 10 11 12
131	Orders if unsound mind or permanent unfitness for trial	13
(1)	This section applies if, on a reference in relation to a person, the Mental Health Court decides the person—	14 15
(a)	was of unsound mind when the offence was allegedly committed; or	16 17
(b)	is unfit for trial and the unfitness for trial is permanent.	18
(2)	The court must make the order required under division 2 or 3 for the person.	19 20
(3)	However, if the court is not required under division 2 or 3 to make an order for the person, the court may make no order for the person.	21 22 23
132	Orders if temporary unfitness for trial	24
(1)	This section applies if, on a reference in relation to a person, the Mental Health Court decides the person is unfit for trial and the unfitness for trial is not permanent.	25 26 27
(2)	The court must make an order for the person under division 2 or 3.	28 29

[s 133]

133	Matters to which Mental Health Court must have regard	1
(1)	In making a decision under this part in relation to an order for a person, the Mental Health Court must have regard to the following—	2 3 4
(a)	the relevant circumstances of the person;	5
(b)	the nature of the offence to which the reference relates and the period of time that has passed since the offence was allegedly committed;	6 7 8
(c)	any victim impact statement produced by the prosecuting authority for the offence under part 5, division 3.	9 10 11
	<i>Examples of decisions under this part in relation to an order—</i>	12
	• deciding whether a forensic order or treatment support order is necessary	13 14
	• deciding the category of the order	15
	• deciding whether the person is to receive any treatment in the community	16 17
	• deciding the conditions, if any, to impose on the order	18
(2)	Subsection (1) does not limit any other provision of this part that requires the court to have regard to a stated matter.	19 20
Division 2	Forensic orders	21
Subdivision 1	Making of forensic orders	22
134	Requirements for making forensic order	23
(1)	The Mental Health Court must make an order (a <i>forensic order (mental health)</i> or <i>forensic order (disability)</i>) for the person if the court considers a forensic order is necessary, because of the person’s mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property.	24 25 26 27 28 29

Note—

- If the court does not consider a forensic order is necessary, see division 2
3 in relation to the making of a treatment support order. 3
- (2) In deciding whether a forensic order is necessary, the court 4
must have regard to the policies mentioned in section 5
303(1)(e) and (f). 6
- (3) If the court makes a forensic order for the person, the order 7
must be— 8
- (a) a forensic order (mental health) if the court considers— 9
- (i) the person’s unsoundness of mind was, or unfitness 10
for trial is, because of a mental condition other 11
than an intellectual disability; or 12
- (ii) the person has a dual disability and needs 13
involuntary treatment and care for the person’s 14
mental illness, as well as care for the person’s 15
intellectual disability; or 16
- (b) a forensic order (disability) if the court considers— 17
- (i) the person’s unsoundness of mind was, or unfitness 18
for trial is, because of an intellectual disability; and 19
- (ii) the person needs care for the person’s intellectual 20
disability but does not need treatment and care for 21
any mental illness. 22
- (4) Subsection (3)(a)(ii) applies regardless of the basis on which 23
the court decides the person was of unsound mind when the 24
offence was allegedly committed, or is unfit for trial. 25

135 Conditions 26

- (1) The Mental Health Court may, in a forensic order for a person, 27
impose the conditions it considers appropriate. 28
- (2) Without limiting subsection (1), the court may impose a 29
condition that the person must not contact a stated person, 30
including, for example, a victim of the relevant unlawful act. 31

[s 136]

- (3) However, the court may not impose a condition requiring the person to take a particular medication or a particular dosage of a medication. 1
2
3

136 Recommendations about intervention programs 4

The Mental Health Court may, in a forensic order for a person, make the recommendations it considers appropriate about particular intervention programs that a stated authorised mental health service or the forensic disability service should provide for the person. 5
6
7
8
9

Examples of intervention programs— 10

drug and alcohol programs, anger management counselling programs, sexual offender programs 11
12

137 Non-revocation period 13

- (1) This section applies if, on a reference in relation to a person charged with a prescribed offence, the Mental Health Court— 14
15
- (a) decides the person— 16
- (i) was of unsound mind when the offence was allegedly committed; or 17
18
- (ii) is unfit for trial and the unfitness for trial is permanent; and 19
20
- (b) makes a forensic order for the person. 21
- (2) The court may state in the order a period of not more than 10 years (the *non-revocation period*) during which the tribunal may not revoke the order, other than under section 455. 22
23
24
- (3) In deciding the non-revocation period, the court must have regard to the object of this Act in relation to protecting the community. 25
26
27

Subdivision 2	Treatment in the community	1
138	Mental Health Court to decide category	2
(1)	If the Mental Health Court decides to make a forensic order for a person, the court must also decide the category of the order.	3 4 5
(2)	The court may decide the category of the order is community only if the court considers there is not an unacceptable risk to the safety of the community, because of the person's mental condition, including the risk of serious harm to other persons or property.	6 7 8 9 10
(3)	The forensic order must state the category of the order.	11
139	Inpatient category	12
(1)	If the Mental Health Court decides the category of a forensic order for a person is inpatient, the court must do 1 of the following—	13 14 15
(a)	order that the person have no limited community treatment;	16 17
	<i>Note—</i>	18
	An order made under paragraph (a) may be amended by the tribunal, but may not be amended by an authorised doctor. See sections 212(2) and 443(2)(b) and (c).	19 20 21
(b)	approve that an authorised doctor under section 212 or a senior practitioner under the Forensic Disability Act, section 20 may, at a future time—	22 23 24
(i)	authorise limited community treatment for the person, to the extent and subject to the conditions decided by the court; or	25 26 27
(ii)	change the category of the order to community, subject to the conditions decided by the court;	28 29
(c)	order that the person have limited community treatment—	30 31

[s 140]

(i)	of a stated extent; and	1
(ii)	subject to the conditions decided by the court, including whether, or the extent to which, an authorised doctor under section 212 or a senior practitioner under the Forensic Disability Act, section 20 may amend the forensic order in relation to treatment in the community.	2 3 4 5 6 7
(2)	The court may make an order under subsection (1)(b) or (c) only if the court is satisfied there is not an unacceptable risk to the safety of the community, because of the person’s mental condition, including the risk of serious harm to other persons or property.	8 9 10 11 12
(3)	In deciding whether the court is satisfied of the matters mentioned in subsection (2), the court must have regard to—	13 14
(a)	the purpose of limited community treatment; and	15
(b)	the fact that—	16
(i)	if an authorised mental health service is responsible for the person—an authorised doctor may increase the extent of treatment in the community for the person only if satisfied of the matters mentioned in section 212(3); or	17 18 19 20 21
(ii)	if the forensic disability service is responsible for the person—a senior practitioner under the Forensic Disability Act may authorise treatment in the community for the person only if satisfied of the matters mentioned in the Forensic Disability Act, section 20(2).	22 23 24 25 26 27
140	Community category	28
	If the Mental Health Court decides the category of a forensic order for a person is community, the court must—	29 30
(a)	order that an authorised doctor or a senior practitioner under the Forensic Disability Act must not change the category of the order to inpatient; or	31 32 33

Note—

The category of the order may be changed by the tribunal. See section 442.

- (b) approve that an authorised doctor under section 212 or a senior practitioner under the Forensic Disability Act, section 20 may, at a future time, change the nature or extent of treatment in the community received by the person, to the extent and subject to the conditions decided by the court.

Example of a change of the nature or extent of treatment in the community—

changing the category of the forensic order from community to inpatient, with or without limited community treatment

Subdivision 3 Other provisions

141 When category of forensic order (disability) may be described as residential

- (1) This section applies to a forensic order (disability) for a person if—
- (a) the category of the order is inpatient; and
 - (b) the forensic disability service is responsible for the person.
- (2) The category of the order may be described as residential.

142 Admission to high security unit—stay of order

- (1) This section applies if—
- (a) the Mental Health Court makes a forensic order for a person; and
 - (b) under the order, the person is to be detained in a high security unit; and

[s 143]

- (c) the chief psychiatrist asks the court to stay the order for a period of not more than 7 days to enable the high security unit to make a physical place available for the person. 1
2
3
4
- (2) The court may stay the order for the period requested by the chief psychiatrist. 5
6
- (3) However, if the court is satisfied the person needs urgent treatment and care in the high security unit, the court may— 7
8
 - (a) refuse to stay the order; or 9
 - (b) stay the order for a shorter period than requested. 10
- (4) If the court stays the order and the person is being held in custody, the person must remain in custody until the person is admitted to the high security unit. 11
12
13

Division 3 Treatment support orders 14

Subdivision 1 Making of treatment support orders 15

143 Requirements for making treatment support order 16

- (1) The Mental Health Court must make an order (a *treatment support order*) for the person if the court considers a treatment support order, but not a forensic order, is necessary, because of the person’s mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property. 17
18
19
20
21
22
- (2) In deciding whether a treatment support order, but not a forensic order, is necessary, the court must have regard to the policy that must be made by the chief psychiatrist under section 303(1)(g) in relation to persons subject to treatment support orders. 23
24
25
26
27
- (3) This section does not apply if the court considers— 28

(a)	the person’s unsoundness of mind was, or unfitness for trial is, because of an intellectual disability; and	1 2
(b)	the person does not need treatment and care for any mental illness.	3 4
144	Conditions	5
(1)	The Mental Health Court may, in a treatment support order for a person, impose the conditions it considers appropriate.	6 7
(2)	Without limiting subsection (1), the court may impose a condition that the person must not contact a stated person, including, for example, a victim of the relevant unlawful act.	8 9 10
(3)	However, the court may not impose a condition requiring the person to take a particular medication or a particular dosage of a medication.	11 12 13
Subdivision 2	Treatment in the community	14
145	Mental Health Court to decide category and community treatment	15 16
(1)	If the Mental Health Court decides to make a treatment support order for a person, the court must also decide the category of the order.	17 18 19
(2)	However, the court may decide the category of the treatment support order is inpatient only if the court considers 1 or more of the following can not reasonably be met if the category of the order is community—	20 21 22 23
(a)	the person’s treatment and care needs;	24
(b)	the safety and welfare of the person;	25
(c)	the safety of others.	26
(3)	If the court decides the category of the treatment support order is inpatient, the court may approve limited community	27 28

[s 146]

treatment for the person, to the extent and subject to the
conditions decided by the court. 1
2

Note— 3

See section 216 for an authorised doctor’s powers in relation to a
treatment support order. 4
5

(4) In deciding whether to approve limited community treatment
under subsection (3), the court must have regard to the
purpose of limited community treatment. 6
7
8

(5) If the court decides the category of the treatment support order
is community, or approves limited community treatment for
the person under subsection (3), the court must decide
whether an authorised doctor may, at a future time, reduce the
extent of treatment in the community received by the person. 9
10
11
12
13

Note— 14

On a review of the order, the tribunal may change the nature or extent of
the person’s treatment in the community. See sections 473 and 474. 15
16

(6) The treatment support order must state the category of the
order. 17
18

Division 4 Responsibility for treatment and 19 **care** 20

146 Responsibility for person subject to forensic order 21 **(mental health) or treatment support order** 22

(1) If the Mental Health Court makes a forensic order (mental
health) or treatment support order for a person, the order must
state the authorised mental health service responsible for the
person. 23
24
25
26

(2) The stated authorised mental health service is responsible for
the person. 27
28

(3) Subsection (2) does not prevent treatment and care being
provided to the person by another authorised mental health
service if the person seeks treatment and care by the service. 29
30
31

(4)	This section is subject to section 354.	1
147	Responsibility for person subject to forensic order (disability)	2 3
(1)	If the Mental Health Court makes a forensic order (disability) for a person, the order must state—	4 5
(a)	the authorised mental health service responsible for the person; or	6 7
(b)	that the forensic disability service is responsible for the person.	8 9
(2)	However, the court may decide the forensic disability service is responsible for the person only if the chief executive (forensic disability) certifies, in writing, that the forensic disability service has the required capacity.	10 11 12 13
(3)	If the court makes an order under subsection (1)(a), the stated authorised mental health service is responsible for the person.	14 15
(4)	If the court makes an order under subsection (1)(b), the forensic disability service is responsible for the person.	16 17
(5)	Subsection (3) does not prevent treatment and care being provided to the person by another authorised mental health service if the person seeks treatment and care by the service.	18 19 20
(6)	Subsection (4) does not prevent treatment and care being provided to the person by an authorised mental health service if the person seeks treatment and care by the service.	21 22 23
(7)	This section is subject to section 354.	24
(8)	In this section—	25
	<i>required capacity</i> means—	26
(a)	the physical capacity to accommodate the person; and	27
(b)	the capacity to provide care for the person under the order.	28 29

[s 148]

148	Certificate of forensic disability service availability	1
(1)	This section applies for the purpose of the Mental Health Court deciding under section 147 whether the forensic disability service will be responsible for the person.	2 3 4
(2)	The court may ask the director of forensic disability to give the court a certificate prepared by the chief executive (forensic disability) stating whether or not the forensic disability service has the required capacity within the meaning of section 147.	5 6 7 8 9
(3)	If asked by the director of forensic disability to prepare a certificate mentioned in subsection (2), the chief executive (forensic disability) must prepare, and give the director, the certificate.	10 11 12 13
(4)	If the court makes a request under subsection (2), the director of forensic disability must give the court the certificate within—	14 15 16
(a)	7 days after receiving the request; or	17
(b)	any longer period allowed by the court.	18
Division 5	Transport	19
149	Transport to authorised mental health service	20
(1)	This section applies if—	21
(a)	the Mental Health Court makes a forensic order or treatment support order for a person and the category of the order is inpatient; and	22 23 24
(b)	an authorised mental health service is responsible for the person under the order.	25 26
(2)	An authorised person may transport the person to the authorised mental health service.	27 28
	<i>Note—</i>	29

For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.	1 2
150 Transport to forensic disability service	3
(1) This section applies if—	4
(a) the Mental Health Court makes a forensic order (disability) for a person and the category of the order is inpatient; and	5 6 7
(b) the forensic disability service is responsible for the person under the order.	8 9
(2) An authorised person, or an authorised practitioner under the Forensic Disability Act, may transport the person to the forensic disability service.	10 11 12
<i>Note—</i>	13
For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.	14 15
Division 6 Other provisions	16
151 Matters authorised by forensic order (mental health) or treatment support order	17 18
(1) A forensic order (mental health), or treatment support order, for a person authorises each of the following in accordance with the order—	19 20 21
(a) if the person has a mental condition other than an intellectual disability—the provision of involuntary treatment and care for the person’s mental illness or other mental condition;	22 23 24 25
(b) if the person has a dual disability—	26
(i) the provision of involuntary treatment and care for the person’s mental illness; and	27 28

[s 152]

(ii)	the provision of involuntary care for the person’s intellectual disability;	1 2
(c)	if the category of the order is inpatient—the detention of the person in the authorised mental health service that is responsible for the person.	3 4 5
(2)	The person responsible for the treatment and care must ensure the order is given effect.	6 7
	<i>Note—</i>	8
	See section 15 for the person responsible for the treatment and care of a person subject to a forensic order (mental health) or treatment support order.	9 10 11
152	Matters authorised by forensic orders (disability)	12
(1)	A forensic order (disability) for a person authorises each of the following in accordance with the order—	13 14
(a)	the provision of involuntary care for the person’s intellectual disability;	15 16
(b)	if the category of the order is inpatient, the person’s detention in—	17 18
(i)	if an authorised mental health service is responsible for the person—the authorised mental health service; or	19 20 21
(ii)	if the forensic disability service is responsible for the person—the forensic disability service.	22 23
(2)	The person responsible for the care must ensure the order is given effect.	24 25
	<i>Note—</i>	26
	See section 15 for the person responsible for the care of a person subject to a forensic order (disability).	27 28

153	Status of forensic order or treatment support order if amended	1 2
(1)	A forensic order or treatment support order made under this part has effect subject to any amendment of the order—	3 4
(a)	by the tribunal under chapter 12; or	5
(b)	by an authorised doctor under section 212 or 216.	6
(2)	The order, as amended, continues as an order of the Mental Health Court.	7 8
154	Ending of order made because of temporary unfitness for trial	9 10
(1)	This section applies to any of the following orders to which a person is subject—	11 12
(a)	a forensic order (mental health), forensic order (disability) or treatment support order made because the Mental Health Court decides the person is unfit for trial and the unfitness for trial is not permanent;	13 14 15 16
(b)	if the tribunal revokes a forensic order (mental health) mentioned in paragraph (a) and makes a forensic order (disability) for the person under section 455—the forensic order (disability);	17 18 19 20
(c)	if the tribunal revokes a forensic order (mental health) mentioned in paragraph (a) and makes a treatment support order for the person under section 448—the treatment support order.	21 22 23 24
(2)	The order ends if the proceeding against the person for the offence to which the reference relates is discontinued other than under section 488 or 489.	25 26 27
	<i>Notes—</i>	28
1	See section 491 in relation to the discontinuance of the proceeding other than under section 488 or 489.	29 30
2	Also, if the tribunal decides on a review under chapter 12, part 6 that the person is fit for trial, the order ends under section 495(2).	31 32

[s 155]

Part 5	Other provisions	1
Division 1	Notice of decisions and orders	2
155	Notice of decisions and orders	3
(1)	The registrar must, within 7 days after the Mental Health Court makes its decision on a reference, give the following persons written notice of the court’s decision, and any orders made by the court—	4 5 6 7
(a)	each person who was entitled to be given notice of the reference under section 113(1);	8 9
(b)	the tribunal.	10
(2)	Also, if a victim impact statement was given to the court on the hearing of the reference, the registrar must give the tribunal a copy of the statement.	11 12 13
(3)	The chief executive (justice) must, as soon as practicable after receiving the notice mentioned in subsection (1), give each of the following persons written notice of the court’s decision—	14 15 16
(a)	the registrar of the court in which the proceeding for the offence has been brought;	17 18
(b)	if the prosecuting authority for the offence is not the director of public prosecutions—the prosecuting authority for the offence.	19 20 21
Division 2	Admissibility and use of evidence	22
156	Definition for div 2	23
	In this division—	24
	<i>expert’s report</i> includes a clinical record relevant to a person’s mental condition.	25 26

157	Admissibility of expert's report at trial	1
	An expert's report received in evidence by the Mental Health Court on a reference is admissible at the trial of the person for the offence in relation to the reference only for the following purposes—	2 3 4 5
	(a) deciding whether—	6
	(i) for the application of the Criminal Code, section 613, the person is not capable of understanding the proceedings; or	7 8 9
	(ii) for the application of the Criminal Code, section 645, the person is not of sound mind; or	10 11
	(iii) the person was of unsound mind or diminished responsibility when the offence was allegedly committed; or	12 13 14
	(iv) the person should be admitted to an authorised mental health service under a forensic order (Criminal Code);	15 16 17
	(b) sentencing the person.	18
158	Particular statements not admissible	19
	(1) A statement made by the person the subject of a reference at the hearing of the reference is not admissible in evidence in any civil or criminal proceeding against the person.	20 21 22
	(2) Subsection (1) applies to statements made orally or in writing and whether on oath or otherwise.	23 24
	(3) However, subsection (1) does not apply to a proceeding for—	25
	(a) contempt of the Mental Health Court; or	26
	(b) an offence against the Criminal Code, chapter 16.	27
159	Issue of mental condition may be raised at trial	28
	(1) A decision by the Mental Health Court on a reference in relation to a person does not prevent the person raising the	29 30

[s 160]

issue of the person’s mental condition at the person’s trial for the offence.	1 2
(2) If the issue of the person’s mental condition is raised at the person’s trial, the Mental Health Court’s decision is admissible for sentencing, but is not otherwise admissible at the trial.	3 4 5 6
160 Other use of expert’s report	7
(1) An expert’s report received in evidence by the Mental Health Court on a reference in relation to a person may be given to—	8 9
(a) if an authorised mental health service is responsible for the person—the administrator of the service; or	10 11
(b) if the forensic disability service is responsible for the person—the administrator of the service; or	12 13
(c) the tribunal for conducting a review.	14
(2) The report may be given to, and used by, another person only with the leave of the court.	15 16
(3) The court may grant the leave subject to the conditions it considers appropriate.	17 18
Division 3 Victim impact statements	19
161 Application of div 3	20
This division applies if, on a reference in relation to a person, the Mental Health Court decides the person—	21 22
(a) was of unsound mind when the offence was allegedly committed; or	23 24
(b) is unfit for trial.	25

162	Preparation of victim impact statement	1
(1)	A victim of the relevant unlawful act, or a close relative of the victim, may prepare, and give the prosecuting authority for the relevant unlawful act, a victim impact statement in relation to the relevant unlawful act, for the purpose of the prosecuting authority producing the statement to the Mental Health Court.	2 3 4 5 6
(2)	The victim impact statement may include—	7
(a)	the views of the victim or close relative about the risk the person the subject of the reference represents to the victim or close relative or another person; and	8 9 10
(b)	a request by the victim or close relative that the Mental Health Court impose, in any forensic order or treatment support order made for the person the subject of the reference, a condition that the person must not contact—	11 12 13 14
(i)	the victim or close relative; or	15
(ii)	another individual, including, for example, another close relative of the victim.	16 17
163	Production of victim impact statement by prosecuting authority	18 19
	If a victim of the relevant unlawful act, or a close relative of the victim, gives the prosecuting authority a victim impact statement, the prosecuting authority must give the statement to the Mental Health Court.	20 21 22 23
164	Restrictions on disclosing victim impact statement	24
(1)	The Mental Health Court must not disclose the victim impact statement to the person the subject of the reference unless the victim or close relative asks that the statement be disclosed to the person.	25 26 27 28
(2)	Despite a request mentioned in subsection (1), the court may, by order, prohibit the disclosure of the victim impact	29 30

[s 165]

statement to the person if satisfied the disclosure may adversely affect the health and wellbeing of the person.	1 2
(3) A person must not contravene an order made under subsection (2) unless the person has a reasonable excuse.	3 4
Maximum penalty—200 penalty units.	5
(4) This section does not prevent the court disclosing the victim impact statement to a lawyer of the person the subject of the reference if satisfied the disclosure is in the best interests of the person.	6 7 8 9
(5) Subject to subsection (3), the person’s lawyer may disclose the victim impact statement to the person only if the victim or close relative asks that the statement be disclosed to the person.	10 11 12 13
(6) The person’s lawyer must not disclose the victim impact statement to the person in contravention of subsection (5) unless the lawyer has a reasonable excuse.	14 15 16
Maximum penalty—200 penalty units.	17
(7) In this section—	18
<i>lawyer</i> , of a person, includes another representative of the person.	19 20
165 Use of victim impact statement by Mental Health Court	21
(1) This section applies if the Mental Health Court is required to have regard to a victim impact statement in deciding a matter under part 4.	22 23 24
(2) The court may place the weight on the victim impact statement it considers appropriate.	25 26

Division 4	Persons subject to existing orders or authorities	1 2
166	Person subject to existing forensic order	3
(1)	This section applies if the Mental Health Court is required under this chapter to make a forensic order (a <i>new forensic order</i>) for a person who is already subject to a forensic order (the <i>existing forensic order</i>).	4 5 6 7
(2)	The court may—	8
(a)	amend the existing forensic order for the person; or	9
(b)	revoke the existing forensic order for the person and make a new forensic order for the person.	10 11
	<i>Note—</i>	12
	If there is an information notice relating to the person, the revocation of the existing forensic order under this section does not affect the information notice. See section 320.	13 14 15
167	Person subject to existing treatment authority or treatment support order	16 17
(1)	This section applies if the Mental Health Court makes a forensic order (mental health) for a person who is subject to a treatment authority or treatment support order.	18 19 20
(2)	On the making of the forensic order (mental health), the treatment authority or treatment support order ends.	21 22
(3)	Nothing in this section prevents the court making a forensic order (disability) for a person who is subject to a treatment authority.	23 24 25
(4)	If a treatment authority for a person is inconsistent with a forensic order (disability) for the person, the forensic order (disability) prevails to the extent of the inconsistency.	26 27 28

[s 168]

Division 5	Miscellaneous	1
168	Relationship with ch 16, pt 1	2
	To the extent of any inconsistency with chapter 16, part 1, this chapter prevails.	3 4
Chapter 6	Powers of courts hearing criminal proceedings and related processes	5 6 7
Part 1	Preliminary	8
169	Purpose of ch 6	9
	The purpose of this chapter is to provide for appropriate powers and processes for courts hearing criminal proceedings and for related matters, including—	10 11 12
	(a) powers for Magistrates Courts, the District Court and the Supreme Court to deal with cases where there is a concern about the mental state of a person charged with an offence, including by making a reference to the Mental Health Court; and	13 14 15 16 17
	(b) the admission of persons subject to forensic orders (Criminal Code) to authorised mental health services; and	18 19 20
	(c) the detention of persons in authorised mental health services during trial.	21 22

170	Childrens Court	1
	In this chapter, a reference to a Magistrates Court, in relation to a person charged with an offence, is taken to include a reference to the Childrens Court if the person charged with the offence is being dealt with under the <i>Youth Justice Act 1992</i> .	2 3 4 5
	<i>Note—</i>	6
	See the <i>Youth Justice Act 1992</i> , section 63 in relation to the powers and jurisdiction of the District Court in its criminal jurisdiction conferred on a Childrens Court judge.	7 8 9
Part 2	Magistrates Courts	10
Division 1	General	11
171	Definition for div 1	12
	In this division—	13
	<i>simple offence</i> see the <i>Justices Act 1886</i> , section 4.	14
172	Power to dismiss complaint—unsound mind or unfitness for trial	15 16
	(1) This section applies if—	17
	(a) a complaint for a simple offence is to be heard and determined by a Magistrates Court; and	18 19
	(b) the court is reasonably satisfied, on the balance of probabilities, that the person charged with the offence—	20 21
	(i) was, or appears to have been, of unsound mind when the offence was allegedly committed; or	22 23
	(ii) is unfit for trial.	24
	(2) The court may dismiss the complaint.	25

[s 173]

Note—

See the *Justices Act 1886*, section 222 in relation to appeals to a District Court judge from an order made in a summary way on a complaint for an offence.

	1
	2
	3
	4
173 Power to adjourn hearing of complaint—temporary unfitness for trial	5 6
(1) This section applies if—	7
(a) a complaint for a simple offence is to be heard and determined by a Magistrates Court; and	8 9
(b) the court is reasonably satisfied, on the balance of probabilities, that the person charged with the offence—	10 11
(i) is unfit for trial; but	12
(ii) is likely to become fit for trial within 6 months.	13
(2) The court may adjourn the hearing of the complaint.	14
(3) However, if the court is reasonably satisfied, on the balance of probabilities, that the person is still unfit for trial 6 months after the hearing of the complaint was adjourned, the court may dismiss the complaint under section 172(2).	15 16 17 18
(4) This section does not limit the court’s power under section 172.	19 20
174 Power to refer person to appropriate agency or entity	21
(1) This section applies if a Magistrates Court—	22
(a) has dismissed a complaint under section 172 or adjourned the hearing of a complaint under section 173; and	23 24 25
(b) is reasonably satisfied the person charged with the offence does not appear to have a mental illness.	26 27
(2) The court may refer the person to—	28
(a) a relevant agency for appropriate care; or	29

-
- (b) the health department or another entity the court
considers appropriate for treatment and care. 1
2
- (3) In this section— 3
- health department* means the department in which the
Hospital and Health Boards Act 2011 is administered. 4
5
- relevant agency* means— 6
- (a) the department in which the *Disability Services Act*
2006 is administered; or 7
8
- (b) the National Disability Insurance Scheme Launch
Transition Agency established under the *National*
Disability Insurance Scheme Act 2013 (Cwlth). 9
10
11

Division 2 References to Mental Health Court 12

175 When reference may be made 13

- (1) This section applies if, in a proceeding before a Magistrates
Court against a person charged with an indictable offence
other than an offence against a law of the Commonwealth, the
court is reasonably satisfied, on the balance of probabilities,
that— 14
15
16
17
18
- (a) the person— 19
- (i) was, or appears to have been, of unsound mind
when the offence was allegedly committed; or 20
21
- (ii) is unfit for trial; and 22
- (b) both of the following apply— 23
- (i) the nature and circumstances of the offence create
an exceptional circumstance in relation to the
protection of the community; 24
25
26
- (ii) the making of a forensic order or treatment support
order for the person may be justified. 27
28

[s 176]

- (2) The court may, in the way set out in section 176, refer to the Mental Health Court the matter of the person’s mental state relating to—
- (a) the indictable offence; and
 - (b) an associated offence.
- 176 How reference is made**
- (1) The registrar of a Magistrates Court that makes a reference under section 175 in relation to a person must file a notice of the reference in the approved form in the Mental Health Court Registry.
- (2) The notice must state each offence in relation to which the person’s mental state is referred.
- (3) The notice must be accompanied by a copy of any report produced to the court relating to the person’s mental state.
- Division 3 Examination orders**
- 177 Power to make examination order for person charged with simple offence**
- (1) This section applies if—
- (a) a Magistrates Court—
 - (i) has dismissed a complaint under section 172 or adjourned the hearing of a complaint under section 173; or
 - (ii) is reasonably satisfied that a person charged with a simple offence would benefit from an examination by an authorised doctor; and
 - (b) the court—
 - (i) is reasonably satisfied the person has a mental illness; or

-
- (ii) is unable to decide whether the person has a mental illness or another mental condition. 1
2
- (2) The court may make an order (an *examination order*) in relation to the person. 3
4
- Note—* 5
- An examination order is a type of judicial order. A judicial order does not authorise the provision of involuntary treatment and care to the person. 6
7
8
- (3) Also, if the complaint has not been dismissed under section 172 and the hearing of the complaint has not been adjourned under section 173, the court may adjourn the hearing of the complaint. 9
10
11
12
- (4) The examination order authorises an authorised doctor for the authorised mental health service or public sector health service facility stated in the order to examine the person, without the person’s consent, to decide whether to— 13
14
15
16
- (a) make a treatment authority for the person; or 17
- (b) make a recommendation for the person’s treatment and care; or 18
19
- (c) if the person is already subject to a treatment authority, forensic order (mental health), forensic order (disability) or treatment support order—change the nature and extent of the treatment and care to be provided to the person under the authority or order. 20
21
22
23
24
- (5) Also, the examination order may— 25
- (a) direct an authorised person to transport the person immediately to an inpatient unit of the authorised mental health service; or 26
27
28
- Note—* 29
- For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5. 30
31
- (b) direct the person to attend at the authorised mental health service or public sector health service facility 32
33
-

[s 178]

within a stated time, of not more than 28 days, after the
order is made. 1
2

Note— 3

See chapter 11, part 6, division 3 for the powers that may be
used in relation to a person who does not comply with a
direction under paragraph (b). 4
5
6

- (6) The registrar of the court must, as soon as practicable after the
examination order is made, give written notice of the order
to— 7
8
9
- (a) if an authorised mental health service is stated in the
order—the administrator of the service; or 10
11
- (b) if a public sector health service facility is stated in the
order—the person in charge of the facility. 12
13

178 Examination of person 14

- (1) For the purpose of examining the person, the person may be
detained in the relevant service for a period (the *examination
period*) of not more than 6 hours starting— 15
16
17
- (a) if the person is at the relevant service when the
examination order is made—when the order is made; or 18
19
- (b) if the person is transported to the relevant service under
the examination order—when the person is first
transported and admitted under the order to the relevant
service; or 20
21
22
23
- (c) if the person attends at the relevant service under the
order—when the person first attends at the service under
the order. 24
25
26
- (2) However, an authorised doctor or authorised mental health
practitioner may extend, or further extend, the examination
period before it ends to not more than 12 hours after it starts if
the authorised doctor or authorised mental health practitioner
reasonably believes the extension is necessary to carry out or
finish the examination of the person. 27
28
29
30
31
32
- (3) The authorised doctor who examines the person may— 33

(a)	make a treatment authority for the person; or	1
(b)	make a recommendation for the person’s treatment and care; or	2 3
(c)	decide the person does not require treatment and care; or	4
(d)	if the person is already subject to a treatment authority, forensic order (mental health), forensic order (disability) or treatment support order—change the nature and extent of the treatment and care to be provided to the person under the authority or order.	5 6 7 8 9
(4)	For subsection (3)(a), section 48 applies as if a reference in the section to the assessment of a person under chapter 2, part 3 were a reference to the examination of the person under an examination order.	10 11 12 13
(5)	If the authorised doctor makes a recommendation under subsection (3)(b) for the person’s treatment and care, the authorised doctor must explain to the person the benefits of being treated voluntarily in accordance with the recommendation.	14 15 16 17 18
	<i>Note—</i>	19
	See section 55 for the matters the authorised doctor must tell, and explain to, the person if the authorised doctor makes a treatment authority for the person as mentioned in subsection (3)(a).	20 21 22
(6)	In this section—	23
	<i>relevant service</i> means the authorised mental health service or public sector health service facility stated in the examination order.	24 25 26
179	Examination report	27
	The authorised doctor must prepare a report (an <i>examination report</i>) stating each of the following—	28 29
(a)	details of the examination carried out under the examination order;	30 31

[s 180]

	(b) the recommendation or decision made under section 178(3);	1 2
	(c) if the authorised doctor makes a recommendation under section 178(3)(b) for the person’s treatment and care—details of the explanation given to the person of the benefits of being treated voluntarily in accordance with the recommendation.	3 4 5 6 7
180	Admissibility of examination report	8
	The examination report is admissible in the following proceedings—	9 10
	(a) the proceeding against the person in which the examination order was made;	11 12
	(b) any future proceeding against the person for an offence to which the examination report is relevant.	13 14
Part 3	Supreme Court and District Court	15 16
Division 1	Making reference to Mental Health Court if person pleads guilty to indictable offence	17 18 19
181	Application of div 1	20
	(1) This division applies if—	21
	(a) a person appears before the Supreme Court or District Court in a relevant proceeding for a charge of an indictable offence, other than an offence against a law of the Commonwealth; and	22 23 24 25

(b)	the court is reasonably satisfied, on the balance of probabilities, that the person—	1 2
(i)	was, or appears to have been, of unsound mind when the offence was allegedly committed; or	3 4
(ii)	for the offence of murder—was, or appears to have been, of diminished responsibility when the offence was allegedly committed; or	5 6 7
(iii)	is unfit for trial.	8
(2)	In this section—	9
	<i>relevant proceeding</i> , for a person charged with an indictable offence, means—	10 11
(a)	if the person pleads guilty to the charge at the person’s trial—the person’s trial; or	12 13
(b)	if the person has pleaded guilty to the charge before a court and has been committed by the court for sentence—the person’s appearance for sentence.	14 15 16
182	Power to order plea of not guilty	17
	The court may order that a plea of not guilty be entered for the person for—	18 19
(a)	the indictable offence with which the person is charged; and	20 21
(b)	if, under the Criminal Code, section 651, a charge of a summary offence laid against the person is to be heard and decided by the court—the summary offence.	22 23 24
183	Power to make reference to Mental Health Court and related orders	25 26
	On the making of the order under section 182, the court must—	27 28
(a)	adjourn the trial; and	29

[s 184]

- (b) in the way set out in section 184, refer to the Mental Health Court the matter of the person’s mental state relating to—
 - (i) the indictable offence with which the person is charged; and
 - (ii) any summary offence mentioned in section 182(b) that is an associated offence; and
 - (c) order that—
 - (i) either—
 - (A) the person be remanded in custody and any bail granted under the *Bail Act 1980* for the person be revoked; or
 - (B) bail be granted, enlarged or varied under the *Bail Act 1980* for the person; or
 - (ii) if a written agreement has been given under this division for the person’s detention in an authorised mental health service—the person be detained in an inpatient unit of the service.
- Note—*
- An order made under subparagraph (ii) is a type of judicial order. A judicial order does not authorise the provision of involuntary treatment and care to the person.

184 How reference to Mental Health Court is made

- (1) The registrar of the court that made the reference under section 183(b) must file a notice of the reference in the approved form in the Mental Health Court Registry.
- (2) The notice must state each offence in relation to which the person’s mental state is referred.
- (3) The notice must be accompanied by a copy of any report produced to the court relating to the person’s mental state.

185	Persons who may give agreement for detention	1
	An agreement for the person’s detention in an authorised mental health service may be given by—	2
	(a) the administrator of the service; or	3
	(b) the chief psychiatrist.	4
186	Agreement for detention—administrator	6
(1)	The administrator of an authorised mental health service may agree to a person’s detention in the service only if the administrator is satisfied the service has the capacity to detain the person for treatment and care.	7
(2)	Without limiting subsection (1), if the authorised mental health service is not a high security unit, the administrator must be satisfied the person’s detention in the service does not present an unreasonable risk to the safety of the person or others having regard to the following—	8
	(a) the person’s mental state and psychiatric history;	9
	(b) the person’s treatment and care needs;	10
	(c) the security requirements for the person.	11
(3)	If the person is a minor, the administrator of the service must not agree under this division to the minor’s detention in a high security unit unless the chief psychiatrist has given prior written approval of the giving of the agreement.	12
(4)	In deciding whether to give the approval, the chief psychiatrist must have regard to the following—	13
	(a) the minor’s mental state and psychiatric history;	14
	(b) the minor’s treatment and care needs;	15
	(c) the security requirements for the minor.	16
(5)	As soon as practicable after deciding to give the approval, the chief psychiatrist must give a copy of the written approval to the administrator.	17
		18
		19
		20
		21
		22
		23
		24
		25
		26
		27
		28
		29
		30

[s 187]

187	Agreement for detention—chief psychiatrist	1
(1)	The chief psychiatrist may agree to a person’s detention in an authorised mental health service only if the administrator of the service has refused to agree under section 186 to the person’s detention in the service.	2 3 4 5
(2)	In deciding whether to agree, the chief psychiatrist must be satisfied of the matters mentioned in section 186(2).	6 7
188	Effect of order for detention	8
(1)	This section applies if a court makes an order under section 183(c)(ii) in relation to a person.	9 10
(2)	An authorised person may—	11
(a)	transport the person to an inpatient unit of the authorised mental health service stated in the order; and	12 13
(b)	at the end of the adjournment, transport the person from the authorised mental health service to appear before the court.	14 15 16
	<i>Note—</i>	17
	For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.	18 19
(3)	The person may be detained under the court’s order in the authorised mental health service.	20 21
Division 2	Forensic orders (Criminal Code)	22
189	Application of div 2	23
(1)	This division applies if, on the trial of a person charged with an indictable offence—	24 25
(a)	the jury makes a relevant finding; and	26
(b)	the Supreme Court or District Court makes a forensic order (Criminal Code).	27 28

(2) In this section—	1
<i>relevant finding</i> means—	2
(a) a finding under the Criminal Code, section 613 (a <i>section 613 finding</i>) that the person is not capable of understanding the proceedings at the trial for the reason that the person is of unsound mind or for another reason stated by the jury; or	3 4 5 6 7
(b) a finding under the Criminal Code, section 645 (a <i>section 645 finding</i>) that the person is not of sound mind; or	8 9 10
(c) a finding under the Criminal Code, section 647 that the person is not guilty of the offence on account of the person being of unsound mind when the act or omission alleged to constitute the offence occurred.	11 12 13 14
190 Registrar of court to give notice of order	15
The registrar of the court that made the forensic order (Criminal Code) must, within 7 days after the order is made, give notice of the order in the approved form to—	16 17 18
(a) the chief psychiatrist; and	19
(b) the tribunal.	20
<i>Notes—</i>	21
1 See chapter 7, part 2 in relation to the examination of a person subject to a forensic order (Criminal Code).	22 23
2 See chapter 12, part 4 for the review of forensic orders (Criminal Code) by the tribunal.	24 25
3 If a jury makes a section 613 finding or section 645 finding in relation to a person, the person's fitness for trial must be reviewed by the tribunal. See chapter 12, part 6.	26 27 28

[s 191]

191	Power to transport person to authorised mental health service	1 2
	For the purpose of giving effect to the forensic order (Criminal Code), an authorised person may transport the person to the authorised mental health service stated in the order.	3 4 5 6
	<i>Note—</i>	7
	For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.	8 9
Part 4	Detention in authorised mental health service during trial	10 11
192	Definition for pt 4	12
	In this part—	13
	<i>court</i> means—	14
	(a) the Supreme Court; or	15
	(b) the District Court; or	16
	(c) a Magistrates Court.	17
193	Power to order person’s detention in authorised mental health service	18 19
	(1) This section applies if, after the trial of a person charged with an indictable offence has started, the court hearing the proceeding—	20 21 22
	(a) decides the person should be remanded in custody during an adjournment; and	23 24
	(b) is satisfied that, because of the person’s mental condition, the person should be detained in an	25 26

	authorised mental health service for treatment and care	1
	during the adjournment.	2
(2)	The court may order that the person be detained, during the adjournment, in an inpatient unit of a stated authorised mental health service if a written agreement has been given under this part for the person's detention in the service.	3 4 5 6
	<i>Note—</i>	7
	An order made under subsection (2) is a type of judicial order. A judicial order does not authorise the provision of involuntary treatment and care to the person.	8 9 10
194	Persons who may give agreement for detention	11
	An agreement for the person's detention in an authorised mental health service may be given by—	12 13
	(a) the administrator of the service; or	14
	(b) the chief psychiatrist.	15
195	Agreement for detention—administrator	16
(1)	The administrator of an authorised mental health service may agree to a person's detention in the service only if the administrator is satisfied the service has the capacity to detain the person for treatment and care.	17 18 19 20
(2)	Without limiting subsection (1), if the authorised mental health service is not a high security unit, the administrator must be satisfied the person's detention in the service does not present an unreasonable risk to the safety of the person or others having regard to the following—	21 22 23 24 25
	(a) the person's mental state and psychiatric history;	26
	(b) the person's treatment and care needs;	27
	(c) the security requirements for the person.	28
(3)	If the person is a minor, the administrator of the service must not agree under this part to the minor's detention in a high	29 30

[s 196]

security unit unless the chief psychiatrist has given prior written approval of the giving of the agreement.	1 2
(4) In deciding whether to give the approval, the chief psychiatrist must have regard to the following—	3 4
(a) the minor’s mental state and psychiatric history;	5
(b) the minor’s treatment and care needs;	6
(c) the security requirements for the minor.	7
(5) As soon as practicable after deciding to give the approval, the chief psychiatrist must give a copy of the written approval to the administrator.	8 9 10
196 Agreement for detention—chief psychiatrist	11
(1) The chief psychiatrist may agree to a person’s detention in an authorised mental health service only if the administrator of the service has refused to agree under section 195 to the person’s detention in the service.	12 13 14 15
(2) In deciding whether to agree, the chief psychiatrist must be satisfied of the matters mentioned in section 195.	16 17
197 Effect of order for detention	18
(1) This section applies if a court makes an order under section 193(2) in relation to a person.	19 20
(2) An authorised person may—	21
(a) transport the person to an inpatient unit of the authorised mental health service stated in the order; and	22 23
(b) at the end of the adjournment, transport the person from the authorised mental health service to appear before the court.	24 25 26
<i>Note—</i>	27
For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.	28 29

(3)	The person may be detained under the court’s order in the authorised mental health service.	1 2
Chapter 7	Treatment and care of patients	3 4
Part 1	Preliminary	5
198	Purpose of ch 7	6
	The purpose of this chapter is to provide for the following—	7
(a)	the responsibilities of authorised doctors and administrators of authorised mental health services in providing treatment and care to patients;	8 9 10
(b)	the assessment of patients subject to a treatment authority to decide whether continuation of the authority is appropriate;	11 12 13
(c)	the authorisation of treatment in the community for involuntary patients;	14 15
(d)	the approval of temporary absences for particular involuntary patients;	16 17
(e)	the appointment of nominated support persons and the recording of advance health directives, enduring powers of attorney and details relating to nominated support persons;	18 19 20 21
(f)	the placing of restrictions on the use of electroconvulsive therapy and non-ablative neurosurgical procedures to treat a mental illness;	22 23 24
(g)	the prohibition of psychosurgery and other treatments.	25

[s 199]

199	Relationship between this Act and custodial status of particular patients	1 2
(1)	This section applies to a patient of an authorised mental health service who is subject to any of the following—	3 4
(a)	a treatment authority;	5
(b)	a forensic order;	6
(c)	a treatment support order.	7
(2)	A person making a decision about the patient’s authority or order, including limited community treatment under the authority or order, must make the decision without regard to whether the patient is in custody under another Act.	8 9 10 11
(3)	However, a decision made under this Act about the patient’s authority or order, including limited community treatment under the authority or order, is subject to any custodial requirement under the other Act.	12 13 14 15
(4)	Subsection (3) does not apply to a patient who is detained as a classified patient in the authorised mental health service under chapter 3.	16 17 18

Part 2	Responsibility to provide treatment and care	19 20
---------------	---	----------

200	Application of pt 2	21
	This part applies to each of the following patients of an authorised mental health service—	22 23
(a)	an involuntary patient subject to—	24
(i)	a treatment authority; or	25
(ii)	a forensic order; or	26
(iii)	a treatment support order;	27

[s 201]

(b)	a person from another State detained in an authorised mental health service under section 366(4);	1 2
(c)	a classified patient (voluntary);	3
(d)	a patient receiving treatment and care under an advance health directive or with the consent of a personal guardian or attorney.	4 5 6
201	Examination of patient for purpose of providing treatment and care	7 8
(1)	This section does not apply to a patient subject to a treatment authority, other than a patient subject to a treatment authority who becomes a classified patient.	9 10 11
	<i>Note—</i>	12
	See section 53 for deciding the nature and extent of treatment and care under a treatment authority.	13 14
(2)	An authorised doctor must examine the patient and decide the nature and extent of treatment and care to be provided to the patient.	15 16 17
(3)	The examination must be made—	18
(a)	as soon as practicable after the person becomes a patient to whom this part applies; or	19 20
(b)	if a patient subject to a treatment authority, forensic order or treatment support order becomes a classified patient—as soon as practicable after the patient becomes a classified patient.	21 22 23 24
(4)	In deciding the treatment and care to be provided to the patient, the authorised doctor must—	25 26
(a)	discuss the treatment and care to be provided with the patient; and	27 28
(b)	have regard to the views, wishes and preferences of the patient, to the extent they can be expressed, including, for example, in an advance health directive.	29 30 31

[s 202]

202	Authorised doctor’s responsibilities for treatment and care	1
		2
(1)	An authorised doctor must ensure the treatment and care to be provided to the patient is, and continues to be, appropriate for the patient’s treatment and care needs and in compliance with the requirements of this Act.	3 4 5 6
(2)	The authorised doctor must record in the patient’s health records the treatment and care planned to be provided, and that is provided, to the patient.	7 8 9
203	Administrator’s responsibilities for treatment and care	10
(1)	The administrator of the authorised mental health service has the following responsibilities for the patient—	11 12
(a)	to take reasonable steps to ensure the patient receives—	13
(i)	the treatment and care planned to be provided to the patient, as recorded in the patient’s health records under section 202; and	14 15 16
(ii)	to the extent practicable, the treatment and care appropriate for any other illness or condition affecting the patient;	17 18 19
(b)	to ensure the systems for recording the patient’s treatment and care, both planned and provided, can be audited;	20 21 22
(c)	to ensure regular assessments of the patient under section 205 happen as decided by an authorised doctor for the authorised mental health service.	23 24 25
(2)	The administrator must also take reasonable steps to ensure the patient’s treatment and care complies with the requirements of this Act.	26 27 28

Part 3	Patients subject to treatment authorities	1 2
Division 1	Preliminary	3
204	Application of pt 3	4
	This part applies to a patient of an authorised mental health service who is subject to a treatment authority.	5 6
Division 2	Regular assessment	7
205	Authorised doctor must assess patient	8
(1)	An authorised doctor must make a first assessment of the patient under this section on or before the date recorded in the patient’s health records under section 59.	9 10 11
(2)	Subsequent assessments of the patient under this section must be completed within 3 months after the date of the patient’s previous assessment.	12 13 14
(3)	Also, an authorised doctor must make an assessment of the patient under this section if the authorised doctor considers at any time that—	15 16 17
(a)	the treatment criteria may no longer apply to the patient; or	18 19
(b)	there may be a less restrictive way for the patient to receive treatment and care for the patient’s mental illness.	20 21 22
(4)	On an assessment under this section, the authorised doctor must—	23 24
(a)	assess the patient; and	25
(b)	discuss the assessment with the patient; and	26

[s 206]

(c)	decide and record in the patient’s health records—	1
(i)	whether the treatment criteria continue to apply to the patient; and	2 3
(ii)	whether there is a less restrictive way for the patient to receive treatment and care for the patient’s mental illness; and	4 5 6
(iii)	if, because of the decisions required under subparagraphs (i) and (ii), the patient’s treatment authority continues—	7 8 9
(A)	whether the category of the patient’s treatment authority continues to be appropriate; and	10 11 12
(B)	if the category is inpatient—whether the extent of any limited community treatment under the authority continues to be appropriate; and	13 14 15 16
(iv)	the date of the patient’s next assessment under this section.	17 18
Division 3	Actions that may be taken after assessment	19 20
206	Authorised doctor may revoke treatment authority	21
(1)	This section applies if, after making an assessment of the patient, an authorised doctor considers—	22 23
(a)	the treatment criteria no longer apply to the patient; or	24
(b)	there is a less restrictive way for the patient to receive treatment and care for the patient’s mental illness.	25 26
(2)	The authorised doctor must revoke the patient’s treatment authority.	27 28
(3)	However, the authorised doctor is not required to revoke the treatment authority if the authorised doctor considers the	29 30

patient's capacity to consent to be treated for the patient's
mental illness is not stable. 1
2

*Example of when a patient's capacity to consent to be treated is not
stable—* 3
4

the patient gains and loses capacity to consent to be treated during a
short time period 5
6

(4) Also, if the authorised doctor is not an authorised psychiatrist,
the revocation takes effect only if the authorised doctor has
consulted with an authorised psychiatrist about the revocation. 7
8
9

(5) An authorised doctor must tell a patient of a revocation of the
patient's treatment authority under this section, and note the
revocation on the patient's treatment authority, as soon as
practicable after the revocation. 10
11
12
13

(6) The administrator of the authorised mental health service
must give written notice of the revocation to the patient, and
the tribunal, within 7 days after the revocation. 14
15
16

**207 Authorised psychiatrist may revoke treatment authority if
patient missing** 17
18

(1) An authorised psychiatrist for an authorised mental health
service may revoke the patient's treatment authority if the
authorised psychiatrist is satisfied the authorised mental
health service has not been able to locate the patient for a
period of at least 6 months. 19
20
21
22
23

(2) The administrator of the authorised mental health service
must give written notice of the revocation to the tribunal
within 7 days after the revocation. 24
25
26

208 Chief psychiatrist may revoke treatment authority 27

(1) This section applies if the chief psychiatrist considers— 28
(a) the treatment criteria no longer apply to the patient; or 29
(b) there is a less restrictive way for the patient to receive
treatment and care for the patient's mental illness. 30
31

[s 209]

- (2) The chief psychiatrist may revoke the patient’s treatment authority. 1
2
- (3) The chief psychiatrist must give written notice of the revocation to the administrator of the patient’s treating health service as soon as practicable after the revocation. 3
4
5
- (4) An authorised doctor must tell the patient of the revocation as soon as practicable after the revocation. 6
7
- (5) The administrator of the patient’s treating health service must give written notice of the revocation to the tribunal within 7 days after the revocation. 8
9
10
- 209 Amendment of treatment authority to change category, limited community treatment or conditions** 11
12
- (1) An authorised doctor may amend the patient’s treatment authority under this section in any of the following ways— 13
14
- (a) to change the category of the authority; 15
- (b) to authorise or revoke, or change the nature or extent of, limited community treatment; 16
17
- (c) to impose a condition on, or change a condition of, the authority. 18
19
- (2) However, the authorised doctor may change the category of the authority to inpatient only if the authorised doctor considers, after having regard to the relevant circumstances of the patient, that 1 or more of the following can not reasonably be met if the category of the authority is community— 20
21
22
23
24
- (a) the patient’s treatment and care needs; 25
- (b) the safety and welfare of the patient; 26
- (c) the safety of others. 27
- (3) Also, the authorised doctor may make the amendment only if satisfied the amendment is appropriate having regard to— 28
29
- (a) the relevant circumstances of the patient; and 30

-
- (b) for an amendment mentioned in subsection (1)(b)—the purpose of limited community treatment. 1
2
- (4) The amendment must not change a condition decided by the tribunal, or be contrary to a decision of the tribunal under section 422 or 423. 3
4
5
- (5) If limited community treatment is authorised under this section, the patient’s treatment authority must state— 6
7
- (a) the nature and conditions of the limited community treatment; and 8
9
- (b) the period, of not more than 7 consecutive days, for which limited community treatment is authorised; and 10
11
- (c) the duration for which the authorisation is in force. 12
- Example for paragraphs (b) and (c)—* 13
- limited community treatment may be authorised for a period of 1 day per week for a duration of 8 weeks 14
15
- (6) The authorised doctor must tell the patient of any proposed amendment of the patient’s treatment authority and explain the effect of the amendment to the patient. 16
17
18
- (7) This section does not apply if the patient is a classified patient. 19
20
- Note—* 21
- See part 6 in relation to classified patients. 22

210 Amendment of treatment authority to change category to inpatient 23
24

- (1) This section applies if— 25
- (a) the category of the patient’s treatment authority is community; and 26
27
- (b) an authorised doctor reasonably believes— 28
- (i) there has been a material change in the patient’s mental state; and 29
30

[s 211]

- (ii) the patient requires urgent treatment and care as an inpatient in an authorised mental health service. 1
2
- (2) Despite section 209, the authorised doctor may amend the patient’s treatment authority to change the category of the authority to inpatient. 3
4
5
- (3) The administrator of the patient’s treating health service must, as soon as practicable after the treatment authority is amended under subsection (2), give the tribunal written notice of the amendment. 6
7
8
9
- Note—* 10
- The tribunal must review the treatment authority within 14 days after receiving written notice of the amendment of the authority. See section 411(4). 11
12
13
- (4) Also, subsection (5) applies if, before the tribunal conducts, or completes the hearing of, the review of the treatment authority mentioned in section 411(4), an authorised doctor amends the authority to change the category of the authority to community. 14
15
16
17
18
- (5) The administrator of the patient’s treating health service must, as soon as practicable after the treatment authority is amended, give the tribunal written notice of the amendment. 19
20
21
- Note—* 22
- Under section 414, the tribunal is not required to conduct, or complete the hearing of, the review. 23
24

Part 4 Patients subject to forensic orders 25
26

211 Application of pt 4 27

- (1) This part applies to a patient of an authorised mental health service who is subject to a forensic order. 28
29

-
- (2) However, this part does not apply if the patient is a classified patient. 1
2
Note— 3
See part 6 in relation to classified patients. 4
- 212 Amendment of forensic order (mental health) or forensic order (disability) to change category, limited community treatment or conditions** 5
6
7
- (1) If the patient’s forensic order is a forensic order (mental health) or a forensic order (disability), an authorised doctor may amend the patient’s forensic order under this section in any of the following ways— 8
9
10
11
- (a) to change the category of the order; 12
- (b) to authorise or revoke, or change the nature or extent of, limited community treatment; 13
14
- (c) to impose a condition on, or change a condition of, the order. 15
16
- (2) The amendment must not be contrary to a decision of the Mental Health Court or the tribunal. 17
18
- Example of a decision that would be contrary to a decision of the Mental Health Court or tribunal—* 19
20
- authorising limited community treatment for the person to a greater extent than the Mental Health Court or the tribunal has decided under section 139(1)(c) or 443(2)(c) 21
22
23
- (3) The authorised doctor may amend the order to increase the extent of treatment in the community only if satisfied, after having regard to the matters mentioned in subsection (4), that there is not an unacceptable risk to the safety of the community, because of the person’s mental condition, including the risk of serious harm to other persons or property. 24
25
26
27
28
29
- (4) The matters to which the authorised doctor must have regard are— 30
31
- (a) the patient’s relevant circumstances; and 32
-

[s 213]

(b)	for an amendment mentioned in subsection (1)(b)—the purpose of limited community treatment; and	1 2
(c)	the nature of the relevant unlawful act and the period of time that has passed since the act happened.	3 4
213	Amendment of forensic order to change category to inpatient	5 6
(1)	This section applies if—	7
(a)	the category of the patient’s forensic order is community; and	8 9
(b)	an authorised doctor reasonably believes—	10
(i)	there has been a material change in the patient’s mental state; and	11 12
(ii)	the patient requires urgent treatment and care as an inpatient in an authorised mental health service.	13 14
(2)	Despite section 212(2), the authorised doctor may amend the patient’s forensic order to change the category of the order to inpatient.	15 16 17
(3)	The administrator of the patient’s treating health service must, as soon as practicable after the forensic order is amended under subsection (2), give the tribunal written notice of the amendment.	18 19 20 21
	<i>Note—</i>	22
	The tribunal must review the forensic order within 21 days after receiving written notice of the amendment of the order. See section 431(4).	23 24 25
(4)	Also, subsection (5) applies if, before the tribunal conducts, or completes the hearing of, the review of the forensic order mentioned in section 431(4), an authorised doctor amends the order to change the category of the order to community.	26 27 28 29
(5)	The administrator of the patient’s treating health service must, as soon as practicable after the forensic order is amended, give the tribunal written notice of the amendment.	30 31 32

Note—

Under section 435, the tribunal is not required to conduct, or complete the hearing of, the review.

- 214 Limited community treatment for patient subject to forensic order (Criminal Code)**
- (1) An authorised doctor may authorise or revoke, or change the nature or extent of, limited community treatment for the patient if—
- (a) the patient’s forensic order is a forensic order (Criminal Code); and
 - (b) the chief psychiatrist has given written approval for the limited community treatment.
- (2) The authorised doctor may authorise or revoke, or change the nature or extent of, limited community treatment only if satisfied, after having regard to the matters mentioned in subsection (4), that there is not an unacceptable risk to the safety of the community, because of the person’s mental condition, including the risk of serious harm to other persons or property.
- (3) The chief psychiatrist may give written approval for the limited community treatment only if satisfied, after having regard to the matters mentioned in subsection (4), that there is not an unacceptable risk to the safety of the community, because of the person’s mental condition, including the risk of serious harm to other persons or property.
- (4) The matters to which the authorised doctor or chief psychiatrist must have regard are—
- (a) the patient’s relevant circumstances; and
 - (b) the purpose of limited community treatment; and
 - (c) the nature of the relevant unlawful act and the period of time that has passed since the act happened.

[s 215]

- (5) The limited community treatment ends on the day the tribunal makes a decision under section 459 in relation to the patient's forensic order (Criminal Code). 1
2
3

Part 5 Patients subject to treatment support orders 4 5

215 Application of pt 5 6

- (1) This part applies to a patient of an authorised mental health service who is subject to a treatment support order. 7
8
- (2) However, this part does not apply if the patient is a classified patient. 9
10
- Note—* 11
- See part 6 for provisions applying to classified patients. 12

216 Amendment of treatment support order to change category, limited community treatment or conditions 13 14

- (1) An authorised doctor may amend the patient's treatment support order under this section in any of the following ways— 15
16
17
- (a) to change the category of the order; 18
- (b) to authorise or revoke, or change the nature or extent of, limited community treatment; 19
20
- (c) to impose a condition on, or change a condition of, the order. 21
22
- (2) However, the authorised doctor may change the category of the order to inpatient only if the authorised doctor considers, after having regard to the relevant circumstances of the patient, that 1 or more of the following can not reasonably be met if the category of the order is community— 23
24
25
26
27

(a)	the patient’s treatment and care needs;	1
(b)	the safety and welfare of the patient;	2
(c)	the safety of others.	3
(3)	Also, the authorised doctor may make the amendment only if satisfied the amendment is appropriate having regard to—	4 5
(a)	the patient’s relevant circumstances; and	6
(b)	for an amendment mentioned in subsection (1)(b)—the purpose of limited community treatment; and	7 8
(c)	the nature of the relevant unlawful act and the amount of time that has passed since the act happened.	9 10
(4)	The amendment must not change a condition decided by the Mental Health Court or tribunal, or be contrary to a decision under section 145(6), 474 or 475(4).	11 12 13
(5)	If limited community treatment is authorised under this section, the patient’s treatment support order must state—	14 15
(a)	the nature and conditions of the limited community treatment; and	16 17
(b)	the period, of not more than 7 consecutive days, for which limited community treatment is authorised; and	18 19
(c)	the duration for which the order is in force.	20
	<i>Example for paragraphs (b) and (c)—</i>	21
	limited community treatment may be authorised for a period of 1 day per week for a duration of 8 weeks	22 23
(6)	The authorised doctor must tell the patient of any proposed amendment of the patient’s treatment support order and explain the effect of the amendment to the patient.	24 25 26
217	Amendment of treatment support order to change category to inpatient	27 28
(1)	This section applies if—	29

[s 217]

- (a) the category of the patient’s treatment support order is community; and 1
2
- (b) an authorised doctor reasonably believes— 3
- (i) there has been a material change in the patient’s mental state; and 4
5
- (ii) the patient requires urgent treatment and care as an inpatient in an authorised mental health service. 6
7
- (2) Despite section 216, the authorised doctor may amend the patient’s treatment support order to change the category of the order to inpatient. 8
9
10
- (3) The administrator of the patient’s treating health service must, as soon as practicable after the treatment support order is amended under subsection (2), give the tribunal written notice of the amendment. 11
12
13
14
- Note—* 15
- The tribunal must review the treatment support order within 14 days after receiving written notice of the amendment of the order. See section 463(4). 16
17
18
- (4) Also, subsection (5) applies if, before the tribunal conducts, or completes the hearing of, the review of the treatment support order mentioned in section 463(4), an authorised doctor amends the order to change the category of the order to community. 19
20
21
22
23
- (5) The administrator of the patient’s treating health service must, as soon as practicable after the treatment support order is amended, give the tribunal written notice of the amendment. 24
25
26
- Note—* 27
- Under section 467, the tribunal is not required to conduct, or complete the hearing of, the review. 28
29

Part 6	Classified patients and patients subject to judicial orders	1 2
218	Application of pt 6	3
	This part applies to each of the following patients of an authorised mental health service if the patient is detained at the service—	4 5 6
	(a) a classified patient;	7
	(b) a patient subject to a judicial order.	8
219	Authorisation of limited community treatment	9
(1)	An authorised doctor may authorise limited community treatment for the patient if—	10 11
	(a) the chief psychiatrist has given written approval for the limited community treatment; and	12 13
	(b) the authorised doctor is satisfied the patient is unlikely to abscond from the authorised mental health service while receiving the limited community treatment.	14 15 16
(2)	The chief psychiatrist may give written approval under subsection (1)(a) if the chief psychiatrist is satisfied the patient is unlikely to abscond from the authorised mental health service while receiving the limited community treatment.	17 18 19 20 21
(3)	For this section, the patient’s limited community treatment must be confined to the grounds and buildings of the authorised mental health service in which the patient is detained.	22 23 24 25
(4)	The patient must remain in the physical presence of a health service employee while the patient is receiving the limited community treatment.	26 27 28

[s 220]

Part 7	Obligations in relation to treatment in the community	1 2
220	Patient’s obligations to be recorded and explained	3
(1)	This section applies if a patient who is subject to a treatment authority, forensic order or treatment support order is authorised under this Act to receive treatment in the community outside an authorised mental health service.	4 5 6 7
(2)	An authorised doctor must decide—	8
(a)	the treatment and care to be provided to the patient while receiving the treatment in the community; and	9 10
(b)	the patient’s obligations while receiving the treatment in the community, including, for example, obligations to attend scheduled appointments with the patient’s treating health service.	11 12 13 14
(3)	In deciding the matters mentioned in subsection (2), the authorised doctor must discuss the matters with the person.	15 16
(4)	Before the patient physically leaves the authorised mental health service to receive the treatment in the community, the authorised doctor must—	17 18 19
(a)	explain to the patient the matters mentioned in subsection (2); and	20 21
(b)	record in the patient’s health records the matters mentioned in subsection (2); and	22 23
(c)	give the patient a written notice summarising the matters mentioned in subsection (2).	24 25
(5)	An authorised doctor is required to comply with subsection (4) only once for each type of treatment in the community authorised for the patient under this Act.	26 27 28
	<i>Example—</i>	29
	If a patient is authorised to receive treatment in the community in the form of day leave on each day of 1 week, an authorised doctor for the	30 31

authorised mental health service is required to comply with subsection (4) only once, and not on each day of the week.	1 2
(6) This section does not apply if the treatment in the community authorised for the patient under this Act is escorted day leave.	3 4
(7) In this section—	5
<i>escorted day leave</i> , for a patient in an authorised mental health service, means the patient, for a period of not more than 1 day and not overnight—	6 7 8
(a) is authorised to be physically away from the service; and	9
(b) is required to remain in the physical presence of a health service employee while physically away from the service.	10 11 12
221 Chief psychiatrist may approve temporary absence	13
(1) This section applies to each of the following patients—	14
(a) a patient subject to a forensic order if the category is inpatient;	15 16
(b) a classified patient;	17
(c) a patient subject to a judicial order.	18
(2) The chief psychiatrist may approve the patient’s temporary absence from an authorised mental health service—	19 20
(a) to receive medical, dental or other health treatment; or	21
(b) to appear before a court, tribunal or other body; or	22
(c) to look for accommodation for the patient for when the patient is discharged from the service; or	23 24
(d) for a purpose based on compassionate grounds; or	25
(e) for another purpose the chief psychiatrist is satisfied justifies approving the absence.	26 27
(3) As soon as practicable after approving the temporary absence, the chief psychiatrist must give written notice of the approval to the administrator of the authorised mental health service.	28 29 30

[s 222]

(4)	The written notice must state—	1
(a)	the approved period of temporary absence; and	2
(b)	any conditions to which the approval is subject, including, for example, that the patient remain in the physical presence of a stated person for the period of the temporary absence.	3 4 5 6
(5)	If the patient does not return to the authorised mental health service after the approved period of temporary absence, an authorised person may transport the patient to the authorised mental health service.	7 8 9 10
	<i>Note—</i>	11
	For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.	12 13
Part 8	Advance health directives, nominated support persons and records system	14 15 16
Division 1	Advance health directives	17
222	Advance health directive may include views about treatment and care	18 19
(1)	This section applies if, by an advance health directive, a principal gives a direction about health matters or special health matters, or appoints an attorney to exercise power for health matters, relating to the principal’s future treatment and care for a mental illness.	20 21 22 23 24
	<i>Note—</i>	25
	An advance health directive may be made under the <i>Powers of Attorney Act 1998</i> only by an adult.	26 27

-
- (2) Without limiting the *Powers of Attorney Act 1998*, section 35(1)(b), the advance health directive may include the principal's views, wishes and preferences about the principal's future treatment and care for a mental illness. 1
2
3
4
- Note—* 5
- Views, wishes and preferences about treatment and care expressed in an advance health directive must be taken into account under section 53 in deciding the nature and extent of treatment and care to be provided under a treatment authority. 6
7
8
9
- (3) In this section— 10
- health matter* see the *Powers of Attorney Act 1998*, schedule 2, section 4. 11
12
- principal* see the *Powers of Attorney Act 1998*, section 5. 13
- special health matter* see the *Powers of Attorney Act 1998*, schedule 2, section 6. 14
15

Division 2 Nominated support persons 16

223 Who is a *nominated support person* 17

- (1) A person is a *nominated support person* of another person (the *appointing person*) if— 18
19
- (a) the person has been appointed, by written notice, as a nominated support person by the appointing person; and 20
21
- (b) the appointing person had capacity to make the appointment at the time of the appointment; and 22
23
- (c) a record for the appointment is kept in the records system. 24
25
- (2) The appointing person may appoint no more than 2 nominated support persons. 26
27
- (3) The appointing person may revoke the appointment of a nominated support person by written notice given to the nominated support person. 28
29
30

[s 224]

- (4) A revocation takes effect only if the appointing person has capacity to revoke the appointment at the time of the revocation. 1
2
3
- (5) A nominated support person may resign by written notice given to the appointing person. 4
5
- (6) For this section, a person has capacity to make or revoke an appointment of a nominated support person if the person has the ability to— 6
7
8
 - (a) understand the nature and effect of the appointment or revocation; and 9
10
 - (b) make and communicate the appointment or revocation. 11

224 Functions of nominated support person 12

A nominated support person may, if the appointing person is or becomes an involuntary patient, do any of the following— 13
14

- (a) receive notices for the appointing person under this Act; 15
- (b) receive confidential information, under the *Hospital and Health Boards Act 2011*, relating to the appointing person; 16
17
18
- (c) request a psychiatrist report under section 90; 19
- (d) to the extent permitted under chapter 12 or 16— 20
 - (i) act as the appointing person’s support person in the tribunal; or 21
22
 - (ii) represent the appointing person in the tribunal. 23

Division 3 Records system 24

225 Chief psychiatrist to maintain records system 25

- (1) The chief psychiatrist must establish and maintain a system (the *records system*) for keeping electronic records of— 26
27

(a)	advance health directives; and	1
(b)	enduring powers of attorney for a personal matter; and	2
(c)	appointments of nominated support persons.	3
(2)	The records system must be capable of keeping an electronic record for a matter mentioned in subsection (1) consisting of—	4 5 6
(a)	a record stating the directive, power of attorney or appointment has been made by a stated person on a stated date; and	7 8 9
(b)	an electronic copy of the directive, power of attorney or notice of appointment.	10 11
226	Request to keep record	12
(1)	This section applies if a person—	13
(a)	makes an advance health directive, or enduring power of attorney for a personal matter, relating to the person’s future treatment and care for a mental illness; or	14 15 16
(b)	appoints a nominated support person.	17
(2)	The person may—	18
(a)	give the administrator of an authorised mental health service a copy of the directive, power of attorney or notice of appointment; and	19 20 21
(b)	ask the administrator to keep a record for the matter in the records system.	22 23
(3)	The administrator must—	24
(a)	comply with the request; and	25
(b)	on complying with the request, give the person written notice confirming compliance with the request.	26 27

[s 227]

227	Requirement to give notice—matters relating to advance health directive	1 2
(1)	This section applies if—	3
(a)	a record for an advance health directive or enduring power of attorney for a personal matter is kept in the records system; and	4 5 6
(b)	under the <i>Powers of Attorney Act 1998</i> —	7
(i)	the directive or power of attorney is revoked by the person who made it, including, to the extent of an inconsistency, by the making of a later advance health directive or power of attorney; or	8 9 10 11
(ii)	to the extent the directive or power or attorney gives power to an attorney for a matter—the attorney resigns.	12 13 14
(2)	The person must give the administrator of an authorised mental health service written notice of the revocation or resignation.	15 16 17
(3)	If subsection (1)(b)(ii) applies, the person is taken to have complied with subsection (2) if the attorney gives the administrator of an authorised mental health service written notice of the resignation.	18 19 20 21
(4)	On receiving a notice under subsection (2) or (3), the administrator must remove or, for an inconsistency mentioned in subsection (1)(b)(i), update the record for the advance health directive or power of attorney in the records system.	22 23 24 25
228	Requirement to give notice—revocation of appointment of nominated support person	26 27
(1)	This section applies if—	28
(a)	a record for an appointment of a nominated support person is kept in the records system; and	29 30
(b)	the appointment is revoked by the person who made it.	31

(2)	The person must give the administrator of an authorised mental health service written notice of the revocation.	1 2
(3)	On receiving the notice, the administrator must remove the record for the appointment from the records system.	3 4
229	Requirement to give notice—resignation of nominated support person	5 6
(1)	This section applies if—	7
(a)	a record for an appointment of a nominated support person is kept in the records system; and	8 9
(b)	the person resigns as nominated support person.	10
(2)	The person must give the administrator of an authorised mental health service written notice of the resignation.	11 12
(3)	On receiving the notice, the administrator must remove the record for the appointment from the records system.	13 14
230	Copy in records system is proof	15
(1)	This section applies if a record for an advance health directive or enduring power of attorney for a personal matter is kept in the records system.	16 17 18
(2)	The directive or power of attorney may be proved by a copy produced from the records system.	19 20
	<i>Note—</i>	21
	See also the <i>Powers of Attorney Act 1998</i> , section 45 for other ways in which the directive or power of attorney may be proved.	22 23

[s 231]

Part 9	Regulated treatment	1
Division 1	Preliminary	2
231	Meaning of <i>regulated treatment</i>	3
	In this part—	4
	<i>regulated treatment</i> means—	5
	(a) electroconvulsive therapy; or	6
	(b) a non-ablative neurosurgical procedure.	7
Division 2	Informed consent	8
232	Requirements for informed consent	9
(1)	A person gives <i>informed consent</i> to the person's treatment by regulated treatment only if—	10 11
(a)	the person has capacity to give consent to the treatment; and	12 13
(b)	the consent is in writing signed by the person; and	14
(c)	the consent is given freely and voluntarily.	15
(2)	For subsection (1)(a), the person has capacity to give consent to the treatment if the person has the ability to—	16 17
(a)	understand the nature and effect of a decision relating to the treatment; and	18 19
(b)	make and communicate the decision.	20
(3)	A person can give informed consent in an advance health directive.	21 22

233	Explanation to be given	1
	Before a person gives informed consent to the person's treatment by regulated treatment, the doctor proposing to provide the treatment must give the person a full explanation, in a form and language able to be understood by the person, about—	2 3 4 5 6
	(a) the purpose, method, likely duration and expected benefit of the treatment; and	7 8
	(b) possible pain, discomfort, risks and side effects associated with the treatment; and	9 10
	(c) alternative methods of treatment available to the person; and	11 12
	(d) the consequences of not receiving treatment.	13
Division 3	Electroconvulsive therapy	14
234	Offence to perform electroconvulsive therapy	15
	A person must not perform electroconvulsive therapy on another person other than under this Act.	16 17
	Maximum penalty—200 penalty units or 2 years imprisonment.	18 19
235	Performance of electroconvulsive therapy with consent or tribunal approval	20 21
	(1) A doctor for an authorised mental health service may perform electroconvulsive therapy on a patient in the authorised mental health service if—	22 23 24
	(a) the patient is an adult and has given informed consent to the treatment; or	25 26
	(b) the patient is an adult, who is unable to give informed consent to the treatment, and the tribunal has approved under section 507 the performance of the therapy on the	27 28 1

[s 236]

adult; or	2
(c) the patient is a minor and the tribunal has approved under section 507 the performance of the therapy on the minor.	3 4 5
(2) If a doctor makes an application under section 505 to the tribunal for approval to perform the therapy on the patient, the doctor must, as soon as practicable after the application is made and to the extent practicable—	6 7 8 9
(a) tell the patient the application has been made; and	10
(b) explain the application to the patient.	11
236 Performance of electroconvulsive therapy in emergency	12
(1) This section applies to the following (each a <i>relevant patient</i>)—	13 14
(a) an involuntary patient subject to a treatment authority, forensic order or treatment support order;	15 16
(b) a person from another State detained in an authorised mental health service under section 366(4).	17 18
(2) A doctor for an authorised mental health service may perform electroconvulsive therapy on the relevant patient in the authorised mental health service if—	19 20 21
(a) a certificate under subsection (3) is in force for the relevant patient; and	22 23
(b) an application under section 505 has been made to the tribunal to perform electroconvulsive therapy on the relevant patient and is not decided.	24 25 26
(3) The doctor and the senior medical administrator of the relevant patient’s treating health service may certify in writing that performing electroconvulsive therapy on the relevant patient is necessary—	27 28 29 30
(a) to save the relevant patient’s life; or	31

[s 237]

(b)	to prevent the relevant patient from suffering irreparable harm.	1 2
(4)	A certificate given under subsection (3) is in force for the period that—	3 4
(a)	starts on the day the application under section 505 is made; and	5 6
(b)	ends on the day the application under section 505 is decided.	7 8
	<i>Note—</i>	9
	Section 725(a) provides that an application under section 505 must be heard as soon as practicable after the application is made.	10 11
Division 4	Non-ablative neurosurgical procedures	12 13
237	Offence to perform non-ablative neurosurgical procedure	14
(1)	A person must not perform a non-ablative neurosurgical procedure on another person for the purpose of treating the other person’s mental illness other than under this Act.	15 16 17
	Maximum penalty—200 penalty units or 2 years imprisonment.	18 19
(2)	To remove any doubt, it is declared that, for subsection (1), none of the following is a mental illness—	20 21
(a)	chronic tic disorder, dystonia, epilepsy, Gilles de la Tourette syndrome, Parkinson’s disease or tremor;	22 23
(b)	another neurological disorder prescribed by regulation.	24
238	Performance of non-ablative neurosurgical procedure with consent and tribunal approval	25 26
	A doctor for an authorised mental health service may perform a non-ablative neurosurgical procedure on a person in the authorised mental health service if—	27 28 29

[s 239]

- (a) the person has given informed consent to the treatment; 1
and 2
 - (b) the tribunal has approved under section 510 the 3
performance of the procedure on the person. 4
- Example of a non-ablative neurosurgical procedure—* 5
deep brain stimulation 6

Part 10 Prohibited treatment 7

239 Particular therapies prohibited 8

- A person must not administer to another person— 9
- (a) insulin induced coma therapy; or 10
 - (b) deep sleep therapy. 11
- Maximum penalty—200 penalty units or 2 years 12
imprisonment. 13

240 Psychosurgery prohibited 14

- A person must not perform psychosurgery on another person. 15
- Maximum penalty—200 penalty units or 2 years 16
imprisonment. 17

Chapter 8	Use of mechanical restraint, seclusion, physical restraint and other practices	1 2 3 4
Part 1	Preliminary	5
241	Purpose of ch 8	6
	The purpose of this chapter is to provide for restrictions on the use of mechanical restraint, seclusion and physical restraint, and the appropriate use of medication, on patients in authorised mental health services.	7 8 9 10
	<i>Notes—</i>	11
	1 See section 372 for the power to administer medication to a person for the purpose of transporting the person.	12 13
	2 See section 373 for the power to use mechanical restraint on an involuntary patient for the purpose of transporting the patient.	14 15
242	Definitions for ch 8	16
	In this chapter—	17
	<i>approved device</i> means a device approved by the chief psychiatrist, including, for example, in the restraint, seclusion and other practices policy.	18 19 20
	<i>mechanical restraint</i> see section 243.	21
	<i>medication</i> , for part 5, division 2, see section 270.	22
	<i>patient</i> means—	23
	(a) an involuntary patient; or	24
	(b) a person receiving treatment and care for a mental illness in an authorised mental health service, other than as an involuntary patient, including a person receiving	25 26 27

[s 243]

treatment and care under an advance health directive or with the consent of a personal guardian or attorney.	1 2	
<i>physical restraint</i> see section 267.	3	
<i>reduction and elimination plan</i> see section 263.	4	
<i>relevant patient</i> means—	5	
(a) an involuntary patient in an authorised mental health service who is subject to a treatment authority, forensic order or treatment support order; or	6 7 8	
(b) a person from another State detained in an authorised mental health service under section 366(4).	9 10	
<i>required information</i> means information required by the chief psychiatrist in the restraint, seclusion and other practices policy.	11 12 13	
<i>required time and way</i> means the time and way required by the chief psychiatrist in the restraint, seclusion and other practices policy.	14 15 16	
<i>seclusion</i> see section 253.	17	
<i>unit</i> , within an authorised mental health service, includes an emergency department or other assessment or treatment unit within the service.	18 19 20	
Part 2	Mechanical restraint	21
Division 1	Preliminary	22
243	Meaning of <i>mechanical restraint</i>	23
(1)	<i>Mechanical restraint</i> is the restraint of a person by the application of a device to the person’s body, or a limb of the person, to restrict the person’s movement.	24 25 26

(2)	However, mechanical restraint does not include—	1
(a)	the appropriate use of a medical or surgical appliance in the treatment of physical illness or injury; or	2 3
(b)	restraint of a person that is authorised or permitted under a law other than this part.	4 5
	<i>Example for paragraph (b)—</i>	6
	The restraint of a person by a police officer may be authorised under the <i>Police Powers and Responsibilities Act 2000</i> , section 615.	7 8 9
244	Offence	10
	A person must not use mechanical restraint on a patient in an authorised mental health service other than under this Act.	11 12
	Maximum penalty—200 penalty units.	13
Division 2	Authorised mechanical restraint	14
245	Requirements for use of mechanical restraint on relevant patients	15 16
(1)	This section applies to a relevant patient.	17
(2)	An authorised doctor, or a health practitioner authorised by an authorised doctor, may use mechanical restraint on the relevant patient in the authorised mental health service if—	18 19 20
(a)	the authorised mental health service is—	21
(i)	a high security unit; or	22
(ii)	another authorised mental health service approved by the chief psychiatrist for the purposes of this part; and	23 24 25
(b)	the device used is an approved device; and	26

[s 246]

- (c) the chief psychiatrist has given approval under section 248 for an authorised doctor to authorise the use of mechanical restraint on the relevant patient; and
- (d) the use of mechanical restraint on the relevant patient is authorised by an authorised doctor under section 249; and
- (e) the use of mechanical restraint on the relevant patient complies with the restraint, seclusion and other practices policy; and
- (f) if a reduction and elimination plan for the relevant patient has been approved under section 266—the use of mechanical restraint on the relevant patient complies with the plan; and
- (g) the use of mechanical restraint on the relevant patient, including applying the device to the relevant patient, is with no more force than is necessary and reasonable in the circumstances; and
- (h) the relevant patient is observed continuously while restrained.

246 Application for chief psychiatrist’s approval

- (1) An authorised doctor may apply to the chief psychiatrist for an approval enabling the authorised doctor to authorise, under section 249, the use of mechanical restraint on a relevant patient in an authorised mental health service.
- (2) The application must be in the approved form and state the following—
 - (a) the name of the relevant patient and the relevant patient’s treating health service;
 - (b) information about the relevant patient’s mental condition;
 - (c) the reasons why the authorised doctor considers there is no other reasonably practicable way to protect the relevant patient or others from physical harm;

	(d) the period, of not more than 7 days, for which the approval is sought;	1 2
	(e) the approved device for which the approval is sought;	3
	(f) any proposed limitations on the use of mechanical restraint on the relevant patient;	4 5
	(g) the way in which the relevant patient is to be observed continuously while restrained.	6 7
	(3) The application may include an application under section 265 for approval of a reduction and elimination plan for the relevant patient.	8 9 10
247	Chief psychiatrist may require amendment of application to include reduction and elimination plan	11 12
	(1) This section applies if an application made by an authorised doctor under section 246 does not include an application under section 265 for approval of a reduction and elimination plan for the relevant patient.	13 14 15 16
	(2) The chief psychiatrist may, by written notice given to the authorised doctor, require the authorised doctor to amend the application to include an application under section 265 for approval of a reduction and elimination plan for the relevant patient.	17 18 19 20 21
248	Chief psychiatrist may approve authorisation of use of mechanical restraint	22 23
	(1) The chief psychiatrist may give approval enabling an authorised doctor to authorise, under section 249, the use of mechanical restraint on a relevant patient if the chief psychiatrist is satisfied there is no other reasonably practicable way to protect the relevant patient or others from physical harm.	24 25 26 27 28 29
	(2) The approval must state—	30

[s 249]

- (a) the period, of not more than 7 days, during which an authorised doctor may authorise the use of mechanical restraint on the relevant patient; and
 - (b) the approved device that must be used; and
 - (c) any limitations to be included in the authorisation relating to the use of mechanical restraint on the relevant patient; and
 - (d) the way in which the relevant patient must be observed continuously while restrained; and
 - (e) any other conditions the chief psychiatrist considers appropriate.
- (3) The approval may include approval under section 266 of a reduction and elimination plan for the relevant patient.

249 Authorisation of use of mechanical restraint by authorised doctor

- (1) An authorised doctor may authorise the use of mechanical restraint on a relevant patient in an authorised mental health service if the authorised doctor is satisfied—
- (a) there is no other reasonably practicable way to protect the relevant patient or others from physical harm; and
 - (b) the authorisation complies with the approval given by the chief psychiatrist under section 248; and
 - (c) the authorisation complies with the restraint, seclusion and other practices policy; and
 - (d) if a reduction and elimination plan for the relevant patient has been approved under section 266—the authorisation complies with the plan.
- (2) The authorisation must be in writing and state the following—
- (a) the period, of not more than 3 hours, during which mechanical restraint may be used on the relevant patient;

(b)	the approved device that must be used;	1
(c)	the time at which the use of mechanical restraint on the relevant patient is to start (the <i>start time</i>);	2 3
(d)	the time at which the use of mechanical restraint on the relevant patient is to end (the <i>end time</i>);	4 5
(e)	the measures that must be taken to ensure the health, safety and comfort of the relevant patient;	6 7
(f)	the way in which the relevant patient must be observed continuously while restrained;	8 9
(g)	whether a health practitioner may end the use of mechanical restraint before the end time.	10 11
(3)	The authorisation may state a start time that is immediately after the end time of a previous authorisation.	12 13
(4)	However, an authorisation may not be given if the total period for which mechanical restraint has been or may have been used on the relevant patient, under the authorisation and any previous authorisation, is more than 9 hours in a 24-hour period.	14 15 16 17 18
(5)	Subsection (4) does not apply if a reduction and elimination plan approved under section 266 provides for the use of mechanical restraint on the relevant patient for more than 9 hours in a 24-hour period.	19 20 21 22
250	Duties of health practitioner in charge of unit	23
	The health practitioner in charge of an inpatient unit or other unit within an authorised mental health service must, if mechanical restraint is used on a relevant patient while the health practitioner is in charge of the unit—	24 25 26 27
(a)	ensure the use complies with the authorisation under section 249; and	28 29
(b)	ensure the relevant patient's reasonable needs are met, including, for example, being given—	30 31
(i)	sufficient bedding and clothing; and	32

[s 251]

	(ii) sufficient food and drink; and	1
	(iii) access to toilet facilities; and	2
	(c) record the required information about the use of mechanical restraint on the relevant patient in the required time and way.	3 4 5
251	Removal of mechanical restraint before authorisation ends	6 7
(1)	The chief psychiatrist must direct an authorised doctor, or the health practitioner in charge of the unit, to end the use of mechanical restraint on a relevant patient, before the end time stated in the authorisation under section 249, if the chief psychiatrist is satisfied the use of mechanical restraint on the relevant patient is no longer necessary to protect the relevant patient or others from physical harm.	8 9 10 11 12 13 14
(2)	An authorised doctor must end the use of mechanical restraint on a relevant patient, before the end time stated in the authorisation under section 249, if the authorised doctor is satisfied the use of mechanical restraint on the relevant patient is no longer necessary to protect the relevant patient or others from physical harm.	15 16 17 18 19 20
(3)	The health practitioner in charge of the unit must end the use of mechanical restraint on a relevant patient, before the end time stated in the authorisation under section 249, if—	21 22 23
(a)	the authorisation states a health practitioner may end the use of mechanical restraint before the end time; and	24 25
(b)	the health practitioner is satisfied the use of mechanical restraint on the relevant patient is no longer necessary to protect the relevant patient or others from physical harm.	26 27 28 29
(4)	If the health practitioner in charge of the unit ends the use of mechanical restraint under subsection (3), the health practitioner must tell the authorised doctor who gave the authorisation as soon as practicable after the use is ended.	30 31 32 33

252	Reuse of mechanical restraint	1
(1)	This section applies if an authorised doctor or the health practitioner in charge of the unit ends the use of mechanical restraint under section 251.	2 3 4
(2)	The authorised doctor or health practitioner may, at any time before the end time stated in the authorisation under section 249, reuse mechanical restraint on the relevant patient if satisfied there is no other reasonably practicable way to protect the relevant patient or others from physical harm.	5 6 7 8 9
(3)	The reuse must comply with the authorisation under section 249 including the end time stated in the authorisation.	10 11
(4)	If the health practitioner in charge of the unit reuses mechanical restraint under subsection (2), the health practitioner must tell the authorised doctor who gave the authorisation as soon as practicable after the reuse.	12 13 14 15

Part 3 Seclusion 16

Division 1 Preliminary 17

253	Meaning of <i>seclusion</i>	18
(1)	<i>Seclusion</i> is the confinement of a person, at any time of the day or night, alone in a room or area from which free exit is prevented.	19 20 21
(2)	However, seclusion does not include—	22
(a)	confinement of a person in a high security unit, or in another authorised mental health service approved by the chief psychiatrist for the purposes of this part, if the confinement is—	23 24 25 26

[s 254]

- (i) for a period, approved by the administrator of the service, of not more than 10 hours between 8p.m. and 8a.m.; and
- (ii) for security purposes; or
- (b) confinement that is authorised under a law other than this part.

254 Offence

A person must not keep a patient in seclusion in an authorised mental health service other than under this Act.

Maximum penalty—200 penalty units.

Division 2 Authorised seclusion

255 Requirements for seclusion of relevant patients

- (1) This section applies to a relevant patient.
- (2) An authorised doctor, or a health practitioner authorised by an authorised doctor, may keep the relevant patient in seclusion in the authorised mental health service if—
 - (a) the seclusion of the relevant patient is authorised by an authorised doctor under section 257 or 258; and
 - (b) if a written direction about seclusion has been given under section 256 to the authorised mental health service—the seclusion of the relevant patient complies with the direction; and
 - (c) the seclusion of the relevant patient complies with the restraint, seclusion and other practices policy; and
 - (d) if a reduction and elimination plan for the relevant patient has been approved under section 266—the seclusion of the relevant patient complies with the plan; and

[s 256]

-
- (e) the seclusion of the relevant patient is done with no more force than is necessary and reasonable in the circumstances; and
- (f) the relevant patient is observed, while kept in seclusion, either—
- (i) continuously; or
- (ii) at intervals of not more than 15 minutes.
- 256 Chief psychiatrist may give written direction about seclusion**
- The chief psychiatrist may give an authorised mental health service a written direction stating any of the following—
- (a) that no relevant patients may be kept in seclusion;
- (b) that a class of relevant patients may not be kept in seclusion;
- (c) that a particular relevant patient may not be kept in seclusion;
- (d) requirements about the way in which all relevant patients, a class of relevant patients, or a particular relevant patient are to be kept in seclusion;
- (e) that all relevant patients, a class of relevant patients, or a particular relevant patient may be kept in seclusion only if the seclusion is provided for under a reduction and elimination plan for the relevant patient approved under section 266.
- 257 Authorisation of seclusion by authorised doctor**
- (1) An authorised doctor may authorise the seclusion of a relevant patient in an authorised mental health service if the authorised doctor is satisfied—
- (a) there is no other reasonably practicable way to protect the relevant patient or others from physical harm; and

[s 257]

- (b) if a written direction about seclusion has been given under section 256 to the authorised mental health service—the seclusion complies with the direction; and
 - (c) the seclusion of the relevant patient complies with the restraint, seclusion and other practices policy; and
 - (d) if a reduction and elimination plan for the relevant patient has been approved under section 266—the seclusion of the relevant patient complies with the plan.
- (2) The authorisation must be in writing and state the following—
 - (a) the period, of not more than 3 hours, during which the relevant patient may be kept in seclusion;
 - (b) the time at which the seclusion of the relevant patient is to start (the *start time*);
 - (c) the time at which the seclusion of the relevant patient is to end (the *end time*);
 - (d) the measures that must be taken to ensure the health, safety and comfort of the relevant patient;
 - (e) the way in which the relevant patient must be observed while kept in seclusion including whether the relevant patient must be observed continuously or at stated intervals of not more than 15 minutes;
 - (f) whether a health practitioner may remove the relevant patient from seclusion before the end time.
- (3) The authorisation may state a start time that is immediately after the end time of a previous authorisation.
- (4) However, an authorisation may not be given if the total period for which the relevant patient has been or may be kept in seclusion, under the authorisation and any previous authorisation, and under section 262, is more than 9 hours in a 24-hour period.
- (5) Subsection (4) does not apply if a reduction and elimination plan approved under section 266 provides for the seclusion of the relevant patient, including under section 262, for more

than 9 hours in a 24-hour period. 2

258 Extension of period of seclusion 3

- (1) This section applies if the total period for which a relevant patient has been or may be kept in seclusion in an authorised mental health service under an authorisation made under section 257 is more than 9 hours in a 24-hour period. 4
5
6
7
- (2) An authorised doctor for the authorised mental health service may extend the period during which the relevant patient may be kept in seclusion, for a further period of not more than 12 hours, if— 8
9
10
11
- (a) the authorised doctor is satisfied— 12
- (i) of the matters mentioned in section 257(1)(a) to (d); and 13
14
- (ii) it has not been reasonably practicable for a reduction and elimination plan for the relevant patient to be approved during the 9 hours; and 15
16
17
- (b) the senior medical administrator of the authorised mental health service, upon being satisfied of the matters mentioned in paragraph (a), has given written approval for the extension. 18
19
20
21
- (3) The extension must be in writing and state the following— 22
- (a) the further period, of not more than 12 hours, during which the relevant patient may be kept in seclusion; 23
24
- (b) the time at which the further period of seclusion of the relevant patient is to start (the *start time*); 25
26
- (c) the time at which the further period of seclusion of the relevant patient is to end (the *end time*); 27
28
- (d) the measures that must be taken to ensure the health, safety and comfort of the relevant patient; 29
30
- (e) the way in which the relevant patient must be observed while kept in the further period of seclusion, including whether the relevant patient must be observed 31
32
1

[s 259]

continuously or at stated intervals of not more than 15 minutes;	2 3
(f) whether a health practitioner may remove the relevant patient from seclusion before the end time.	4 5
(4) As soon as practicable after giving the extension, the senior medical administrator must—	6 7
(a) notify the chief psychiatrist of the extension; and	8
(b) make an application under section 265 for a reduction and elimination plan for the relevant patient.	9 10
(5) The power under this section to extend a period during which a relevant patient may be kept in seclusion may only be exercised once for each occasion the relevant patient receives treatment and care in the authorised mental health service.	11 12 13 14
259 Duties of health practitioner in charge of unit	15
The health practitioner in charge of an inpatient unit or other unit within an authorised mental health service must, if the relevant patient is kept in seclusion while the health practitioner is in charge of the unit—	16 17 18 19
(a) ensure the seclusion complies with the authorisation under section 257 or 258; and	20 21
(b) ensure the relevant patient’s reasonable needs are met, including, for example, being given—	22 23
(i) sufficient bedding and clothing; and	24
(ii) sufficient food and drink; and	25
(iii) access to toilet facilities; and	26
(c) record the required information about the seclusion of the relevant patient in the required time and way.	27 28

-
- 260 Removal from seclusion before authorisation ends** 1
- (1) The chief psychiatrist must direct an authorised doctor, or the 2
health practitioner in charge of the unit, to remove a relevant 3
patient from seclusion, before the end time stated in the 4
authorisation under section 257 or 258, if the chief 5
psychiatrist is satisfied that seclusion of the relevant patient is 6
no longer necessary to protect the relevant patient or others 7
from physical harm. 8
- (2) An authorised doctor must remove a relevant patient from 9
seclusion, before the end time stated in the authorisation 10
under section 257 or 258, if the authorised doctor is satisfied 11
that seclusion of the relevant patient is no longer necessary to 12
protect the relevant patient or others from physical harm. 13
- (3) The health practitioner in charge of the unit must remove a 14
relevant patient from seclusion, before the end time stated in 15
the authorisation under section 257 or 258, if— 16
- (a) the authorisation states a health practitioner may remove 17
the relevant patient from seclusion before the end time; 18
and 19
- (b) the health practitioner is satisfied that seclusion of the 20
relevant patient is no longer necessary to protect the 21
relevant patient or others from physical harm. 22
- (4) If the health practitioner in charge of the unit removes a 23
relevant patient from seclusion under subsection (3), the 24
health practitioner must tell the authorised doctor who gave 25
the authorisation as soon as practicable after the removal. 26
- 261 Return to seclusion after removal** 27
- (1) This section applies if an authorised doctor or the health 28
practitioner in charge of the unit removes a relevant patient 29
from seclusion under section 260. 30
- (2) The authorised doctor or health practitioner may, at any time 31
before the end time stated in the authorisation under section 32
257 or 258, return the relevant patient to seclusion if satisfied 33

[s 262]

there is no other reasonably practicable way to protect the relevant patient or others from physical harm. 1
2

(3) The return to seclusion must comply with the authorisation under section 257 or 258 including the end time stated in the authorisation. 3
4
5

(4) If the health practitioner in charge of the unit returns the relevant patient to seclusion under subsection (2), the health practitioner must tell the authorised doctor who gave the authorisation as soon as practicable after the return. 6
7
8
9

Division 3 Emergency seclusion 10

262 Requirements for emergency seclusion by health practitioner in charge of unit 11 12

(1) The health practitioner in charge of an inpatient unit or other unit within an authorised mental health service, or an appropriately qualified person authorised by the health practitioner, may keep a relevant patient in seclusion in the unit if— 13
14
15
16
17

(a) the health practitioner is satisfied— 18

(i) there is no other reasonably practicable way to protect the relevant patient or others from physical harm; and 19
20
21

(ii) if a written direction about seclusion has been given under section 256 to the authorised mental health service—the seclusion of the relevant patient complies with the direction; and 22
23
24
25

(iii) it is not practicable in the circumstances for an authorised doctor to authorise the seclusion of the relevant patient under section 257; and 26
27
28

(b) the relevant patient is observed continuously during the seclusion; and 29
30

(c) the seclusion is for a period of not more than 1 hour; and 31

-
- (d) as soon as practicable after the start of the seclusion, the health practitioner tells an authorised doctor of the seclusion. 1
2
3
- (2) The authorised doctor notified under subsection (1)(d) must— 4
- (a) examine the relevant patient; or 5
- (b) ensure the relevant patient is examined by another authorised doctor. 6
7
- (3) The authorised doctor who examines the relevant patient must decide whether to authorise the seclusion of the relevant patient under section 257. 8
9
10
- (4) Subject to subsection (1)(c), seclusion of the relevant patient under this section ends when the authorised doctor makes the decision mentioned in subsection (3). 11
12
13
- (5) This section does not prevent the health practitioner in charge of the unit removing the relevant patient from seclusion before the end of the period mentioned in subsection (1)(c), if satisfied seclusion is no longer necessary to protect the relevant patient or others from physical harm. 14
15
16
17
18
- (6) Removal of the relevant patient from seclusion under subsection (5) does not affect the authorised doctor's obligation under subsection (2). 19
20
21
- (7) The relevant patient may be kept in seclusion under this section for not more than 3 hours in a 24-hour period. 22
23

Part 4 Reduction and elimination plans 24 25

263 What is a *reduction and elimination plan* 26

A *reduction and elimination plan* is a written plan, for a relevant patient, developed by an authorised doctor that 27
28

[s 264]

	provides for the reduction and elimination of either or both of the following—	1 2
	(a) the use of mechanical restraint on the relevant patient;	3
	(b) the seclusion of the relevant patient.	4
264	Content of plan	5
	A reduction and elimination plan must include—	6
	(a) the name of the relevant patient; and	7
	(b) information, if any, about—	8
	(i) the previous use of mechanical restraint on, or seclusion of, the relevant patient; and	9 10
	(ii) strategies previously used to reduce the use of mechanical restraint on, or seclusion of, the relevant patient; and	11 12 13
	(iii) the effectiveness of the strategies mentioned in subparagraph (ii); and	14 15
	(c) information about the strategies proposed to reduce, and eliminate, the use of mechanical restraint on, or seclusion of, the relevant patient in the future.	16 17 18
265	Application for chief psychiatrist’s approval of plan	19
	An authorised doctor may apply to the chief psychiatrist for approval of a reduction and elimination plan for a relevant patient.	20 21 22
266	Chief psychiatrist may approve plan	23
	(1) The chief psychiatrist may approve the reduction and elimination plan for the relevant patient if the chief psychiatrist is satisfied the strategies mentioned in section 264(c) are appropriate for the relevant patient.	24 25 26 27

(2)	The approval must be in writing and may include any conditions the chief psychiatrist considers appropriate.	1 2
Part 5	Physical restraint and clinical need for medication	3 4
Division 1	Physical restraint	5
267	Meaning of <i>physical restraint</i>	6
(1)	<i>Physical restraint</i> , of a patient, is the use by a person of his or her body to restrict the patient's movement.	7 8
(2)	However, physical restraint of a patient does not include—	9
(a)	the giving of physical support or assistance reasonably necessary—	10 11
(i)	to enable the patient to carry out daily living activities; or	12 13
(ii)	to redirect the patient because the patient is disoriented; or	14 15
(b)	physical restraint of the patient that is authorised under a law other than this part; or	16 17
(c)	physical restraint of the patient that is required in urgent circumstances.	18 19
268	Offence	20
	A person must not use physical restraint on a patient other than under this Act.	21 22
	Maximum penalty—200 penalty units.	23

[s 269]

269	Requirements for use of physical restraint	1
	An authorised doctor, or a health practitioner in charge of an inpatient unit or other unit within an authorised mental health service, may authorise the use of physical restraint on a patient for 1 or more of the following purposes if there is no other reasonably practicable way to achieve the purpose—	2 3 4 5 6
	(a) to protect the patient or others from physical harm;	7
	(b) to provide treatment and care to the patient;	8
	(c) to prevent the patient from causing serious damage to property;	9 10
	(d) for a patient detained in an authorised mental health service—to prevent the patient from leaving the service.	11 12
Division 2	Clinical need for medication	13
270	Meaning of <i>medication</i>	14
	<i>Medication</i> , of a patient, includes sedation of the patient.	15
271	Offence	16
	(1) A person must not administer medication to a patient unless the medication is clinically necessary for the patient’s treatment and care for a medical condition.	17 18 19
	Maximum penalty—200 penalty units.	20
	(2) Subsection (1) does not limit section 372.	21
	(3) To remove any doubt, it is declared that, for subsection (1), a patient’s treatment and care for a medical condition includes preventing imminent serious harm to the patient or others.	22 23 24

Part 6	Policies	1
272	Chief psychiatrist must make policy	2
(1)	The chief psychiatrist must make a policy (the <i>restraint, seclusion and other practices policy</i>) about—	3 4
(a)	the use of mechanical restraint, seclusion and physical restraint under section 267(1), and the appropriate use of medication, including ways of minimising any adverse impacts on patients; and	5 6 7 8
(b)	the information to be recorded or given to the chief psychiatrist relating to the use on patients of mechanical restraint, seclusion, physical restraint under section 267(1) and medication; and	9 10 11 12
(c)	the time and way in which the information mentioned in paragraph (b) is to be recorded or given to the chief psychiatrist.	13 14 15
(2)	An authorised doctor, authorised mental health practitioner, administrator of an authorised mental health service or other person performing a function or exercising a power under this Act must comply with the restraint, seclusion and other practices policy.	16 17 18 19 20
Chapter 9	Rights of patients and others	21 22
Part 1	Preliminary	23
273	Purpose of ch 9	24
	The purpose of this chapter is to provide for—	25

[s 274]

(a)	a statement of rights; and	1
(b)	the right of a patient to be visited by the patient's nominated support persons, family, carers and other support persons; and	2 3 4
(c)	the right of a patient to be visited by a health practitioner, and legal or other advisers, and to communicate with other persons; and	5 6 7
(d)	the right of a patient to be given oral explanations of the patient's treatment and care; and	8 9
(e)	the giving of written notices to a patient's nominated support persons, family, carers and other support persons; and	10 11 12
(f)	the right for a second opinion to be obtained about a patient's treatment and care; and	13 14
(g)	the roles and responsibilities of a patient's nominated support persons, family, carers and other support persons when supporting the patient's treatment and care; and	15 16 17 18
(h)	the appointment and functions of independent patient rights advisers.	19 20
274	Definition for ch 9	21
	In this chapter—	22
	<i>patient</i> means—	23
(a)	an involuntary patient; or	24
(b)	a person receiving treatment and care for a mental illness in an authorised mental health service, other than as an involuntary patient, including a person receiving treatment and care under an advance health directive or with the consent of a personal guardian or attorney.	25 26 27 28 29

Part 2	Statement of rights	1
275	Preparing statement of rights	2
(1)	The chief psychiatrist must prepare a written statement (the <i>statement of rights</i>) containing information about—	3 4
(a)	the rights of patients, and of nominated support persons, family, carers and other support persons, under this Act; and	5 6 7
(b)	the rights of patients to make complaints about the treatment and care provided at an authorised mental health service and how complaints are made.	8 9 10
(2)	The statement of rights may also contain anything else the chief psychiatrist considers appropriate.	11 12
276	Giving statement of rights to patients and others	13
	After admission of a patient to an authorised mental health service, the administrator of the authorised mental health service must—	14 15 16
(a)	explain the statement of rights to the patient; and	17
	<i>Note—</i>	18
	See section 284 about ensuring a patient understands oral information.	19 20
(b)	give a copy of the statement of rights to the patient, if requested; and	21 22
(c)	give a copy of the statement of rights to the patient’s nominated support persons, family, carers and other support persons, if requested.	23 24 25
277	Display of signs	26
(1)	The administrator of an authorised mental health service must display signs in prominent positions in the service stating that a copy of the statement of rights is available on request.	27 28 29

[s 278]

- (2) The signs must be easily visible to patients and nominated support persons, family, carers and other support persons. 1
2

Part 3 Rights of patients 3

278 Definition for pt 3 4

In this part— 5

reasonable time of the day or night, in relation to an authorised mental health service, means a time decided by the administrator of the service having regard to the practices of the service and the comfort of patients. 6
7
8
9

279 Visits by nominated support persons, family, carers and other support persons 10 11

- (1) A patient in an authorised mental health service may be visited by the patient’s nominated support persons, family, carers and other support persons at any reasonable time of the day or night. 12
13
14
15
- (2) Subsection (1) does not apply if— 16
- (a) the person is excluded from visiting the patient under another provision of this Act; or 17
18
- (b) the patient does not wish to be visited by the person. 19

280 Visits by health practitioners 20

- (1) A patient in an authorised mental health service may be visited and examined by a health practitioner at any reasonable time of the day or night. 21
22
23
- (2) The health practitioner may also consult with an authorised doctor for the authorised mental health service about the patient’s treatment and care. 24
25
26

-
- (3) The health practitioner may exercise a power under subsection (1) or (2) only— 1
2
- (a) if asked by the patient or 1 or more of the patient’s 3
nominated support persons, family, carers or other 4
support persons; and 5
- (b) under arrangements made with the administrator of the 6
authorised mental health service. 7

281 Visits by legal or other advisers 8

- (1) A patient in an authorised mental health service may be 9
visited by a legal or other adviser at any reasonable time of the 10
day or night. 11
- (2) The adviser may exercise a power under subsection (1) 12
only— 13
- (a) if asked by the patient or 1 or more of the patient’s 14
nominated support persons, family, carers or other 15
support persons; and 16
- (b) under arrangements made with the administrator of the 17
authorised mental health service. 18

282 Communication with others 19

- (1) A patient of an authorised mental health service may 20
communicate, in a reasonable way, with another person by— 21
- (a) post; or 22
- Note—* 23
See sections 383 and 384 for provisions relating to postal 24
articles. 25
- (b) a fixed line telephone in the authorised mental health 26
service; or 27
- (c) a mobile telephone or other electronic communication 28
device. 29
- (2) Subsection (1) does not apply if— 30

[s 283]

- (a) the other person has asked the administrator of the authorised mental health service to ensure the patient does not communicate with the person; or
- (b) the communication is prohibited under another provision of this Act.
- (3) The administrator of an authorised mental health service may prohibit or restrict a patient from communicating in the way mentioned in subsection (1)(b) or (c) if communicating in the way is likely to be detrimental to the health or wellbeing of the person or others.
- (4) In exercising a power under subsection (3), the administrator must have regard to the privacy of the patient and others in the service.

283 Information about treatment and care

An authorised doctor providing treatment and care to a patient must, to the extent practicable, provide timely, accurate and appropriate information to the patient about the treatment and care.

284 Understanding of oral information

- (1) This section applies if a provision of this Act requires any of the following persons to tell or explain something to, or discuss something with, a patient—
 - (a) an authorised mental health practitioner;
 - (b) an authorised doctor, including an authorised psychiatrist;
 - (c) a doctor;
 - (d) the administrator of an authorised mental health service;
 - (e) an authorised person transporting a person to an authorised mental health service or public sector health service facility under section 364.

-
- (2) The person must— 1
- (a) take reasonable steps to ensure the patient understands 2
the information; and 3
- (b) tell or explain the thing to, or discuss the thing with, the 4
patient— 5
- (i) in an appropriate way having regard to the patient’s 6
age, culture, mental illness, ability to communicate 7
and any disability; and 8
- Examples for subparagraph (i)—* 9
- 1 If a patient is acutely unwell and does not appear to 10
understand the information given, an authorised 11
doctor may explain the information again when the 12
patient’s condition improves. 13
- 2 After providing information to a patient, an authorised 14
doctor may ask the patient to restate the information 15
to ensure it has been understood. 16
- 3 An authorised doctor may explain information to a 17
patient in the presence of a family member who can 18
help the patient understand it. 19
- (ii) in a way the patient is most likely to understand, 20
including, for example, in the patient’s language; 21
and 22
- (c) if the patient has a nominated support person—tell or 23
explain the thing to, or discuss the thing with, the 24
patient’s nominated support person; and 25
- (d) if the patient does not have a nominated support 26
person—tell or explain the thing to, or discuss the thing 27
with, 1 or more of the patient’s family, carers or other 28
support persons. 29
- (3) For subsection (2)(b), the person may tell or explain the thing 30
to, or discuss the thing with, a patient at a time later than the 31
time provided for under this Act if the person considers the 32
patient would better understand the thing at the later time. 33
- (4) In this section— 34
- patient* includes a person who may become a patient. 35
-

[s 285]

285	Written notices to be given to nominated support persons and others	1 2
(1)	This section applies if—	3
(a)	a provision of this Act requires any of the following persons to give a written notice to a patient—	4 5
(i)	an authorised doctor;	6
(ii)	the administrator of an authorised mental health service;	7 8
(iii)	the chief psychiatrist;	9
(iv)	the tribunal; or	10
(b)	any of the following events (each a <i>significant event</i>) happens to a patient—	11 12
(i)	admission to an authorised mental health service as a classified patient;	13 14
(ii)	responsibility for the patient is transferred under chapter 11, part 5 from an authorised mental health service to another entity.	15 16 17
(2)	If the patient has a nominated support person—	18
(a)	for a written notice mentioned in subsection (1)(a)—	19
(i)	the person must give a copy of the required written notice to the nominated support person; and	20 21
(ii)	the person is not required to give the notice to the patient if the patient may not understand or benefit from receiving the notice; and	22 23 24
(b)	for a significant event mentioned in subsection (1)(b)—the administrator of the authorised mental health service must give a copy of the required written notice to the nominated support person.	25 26 27 28
(3)	If the person giving a required written notice to a patient is aware the patient has a personal guardian or attorney—	29 30
(a)	the person must give a copy of the required written notice to the personal guardian or attorney; and	31 32

-
- (b) for a written notice mentioned in subsection (1)(a)—the person is not required to give the notice to the patient if the patient may not understand or benefit from receiving the notice. 1
2
3
4
- (4) If the patient does not have a nominated support person, or a personal guardian or attorney, the person may give the required written notice to 1 or more of the patient’s family, carers or other support persons (the *other person*) as well as, or instead of, to the patient if— 5
6
7
8
9
- (a) the patient may not understand or benefit from receiving the notice; and 10
11
- (b) giving the notice to the other person appears to be in the patient’s best interests; and 12
13
- (c) the patient has not asked for communication with the other person not to happen. 14
15
- (5) If the patient is a minor, the person may give the required written notice to 1 or more of the minor’s parents as well as, or instead of, to the minor if— 16
17
18
- (a) the minor may not understand or benefit from receiving the notice; and 19
20
- (b) giving the notice to the parent appears to be in the minor’s best interests. 21
22
- (6) In this section— 23
required written notice means— 24
- (a) a written notice mentioned in subsection (1)(a); or 25
- (b) a written notice explaining the significant event mentioned in subsection (1)(b). 26
27

286 Communication about patient with others 28

- (1) This section applies if a provision of this Act requires a person to tell or explain something to, or discuss something with, a patient’s nominated support persons, family, carers or other support persons. 29
30
31
32

[s 287]

(2)	The provision does not apply if—	1
(a)	the patient requests, at a time when the patient has capacity to make the request, that the communication not take place; or	2 3 4
(b)	the person is not readily available or willing for the communication to take place; or	5 6
	<i>Example—</i>	7
	the person is not willing to visit the patient in hospital while the patient is receiving treatment and care	8 9
(c)	the communication with the person is likely to be detrimental to the patient’s health and wellbeing.	10 11
	<i>Example—</i>	12
	the person has previously disrupted the patient’s treatment and care resulting in the patient’s condition deteriorating	13 14
(3)	In this section—	15
	capacity , of a patient to make a request, means the patient has the ability to—	16 17
(a)	understand the nature and effect of the request; and	18
(b)	make and communicate the request.	19
	patient includes a person who may become a patient.	20
287	Disclosure of confidential information under Hospital and Health Boards Act not limited	21 22
(1)	This section applies if a provision of this Act requires or permits information about a person to be given to the person’s nominated support persons, family, carers or other support persons.	23 24 25 26
(2)	The provision does not limit the <i>Hospital and Health Boards Act 2011</i> , sections 144, 145 or 146.	27 28

Note—

The *Hospital and Health Boards Act 2011*, sections 144, 145 and 146 provide for a person’s family, carers and other support persons to receive information about the person in particular circumstances.

		1
		2
		3
		4
288	Second opinion about treatment and care	5
(1)	This section applies if an authorised mental health service has been unable to resolve a complaint about the provision of treatment and care to a patient.	6 7 8
(2)	The patient, or an interested person for the patient, may request the administrator of the service to obtain a second opinion from another health practitioner, including another psychiatrist, about the patient’s treatment and care.	9 10 11 12
(3)	The administrator must make arrangements to obtain the second opinion—	13 14
(a)	from a health practitioner who is independent of the patient’s treating team; and	15 16
(b)	in the way required under a policy or practice guideline.	17
Part 4	Roles and responsibilities of nominated support persons, family, carers and other support persons	18 19 20 21
289	Roles	22
	A patient’s nominated support persons, family, carers and other support persons, subject to this or another Act, may—	23 24
(a)	contact the patient while the patient is receiving treatment and care; and	25 26

[s 290]

- (b) participate in decisions about the patient’s treatment and care, including by being consulted by health practitioners about treatment options; and
- (c) receive timely, accurate and appropriate information about the patient’s treatment, care, support, rehabilitation and recovery; and
- (d) arrange support services for the patient, including, for example, counselling, community care and respite care.

290 Responsibilities

A patient’s nominated support persons, family, carers and other support persons have a responsibility to—

- (a) respect the patient’s dignity and humanity; and
- (b) consider the opinions and skills of health practitioners who provide treatment and care, and other services, to the patient; and
- (c) cooperate, to the extent practicable, with reasonable programs of assessment, treatment, care, support, rehabilitation and recovery of the patient.

Part 5 Independent patient rights advisers

291 Appointment

- (1) An authorised mental health service must have systems in place to ensure that patients are advised of their rights under this Act.
- (2) Without limiting subsection (1), the health service chief executive responsible for a public sector mental health service

[s 292]

must appoint 1 or more independent patient rights advisers in 1
the way required under a policy or practice guideline. 2

- (3) An independent patient rights adviser may be— 3
- (a) an employee of an entity that a Hospital and Health 4
Service has engaged to provide services; or 5
 - (b) an employee of a Hospital and Health Service but not 6
employed in the Service’s mental health service. 7

292 Functions 8

The functions of an independent patient rights adviser are 9
to— 10

- (a) ensure that a patient, and the patient’s nominated 11
support persons, family, carers and other support 12
persons are advised of their rights and responsibilities 13
under this Act; and 14
- (b) help the patient, and the patient’s nominated support 15
persons, family, carers and other support persons to 16
communicate to health practitioners the patient’s views, 17
wishes and preferences about the patient’s treatment and 18
care; and 19
- (c) work cooperatively with community visitors performing 20
functions under the *Public Guardian Act 2014*; and 21
- (d) consult with authorised mental health practitioners, 22
authorised doctors, administrators of authorised mental 23
health services, and the chief psychiatrist on the rights 24
of patients under this Act, the *Guardianship and 25
Administration Act 2000*, the *Powers of Attorney Act 26
1998* and other laws; and 27
- (e) in relation to tribunal hearings— 28
 - (i) advise the patient, and the patient’s nominated 29
support persons, family, carers and other support 30
persons of the patient’s rights at the hearings; and 31

[s 293]

	(ii) if requested, help the patient engage a representative for the hearings; and	1 2
	(f) identify whether the patient has a personal guardian or attorney and, if the patient has a personal guardian or attorney, work cooperatively with the personal guardian or attorney to further the patient's interests; and	3 4 5 6
	(g) if appropriate, advise the patient of the benefits of an advance health directive or enduring power of attorney for a personal matter.	7 8 9
293	Independence	10
	An independent patient rights adviser, in performing the adviser's functions—	11 12
	(a) must act independently and impartially; and	13
	(b) is not subject to direction or control by any person in relation to advice given, or help provided, to a patient or a patient's nominated support persons, family, carers or other support persons.	14 15 16 17
Chapter 10	Chief psychiatrist	18
Part 1	Preliminary	19
294	Purpose of ch 10	20
	The purpose of this chapter is to provide for—	21
	(a) the appointment, functions and powers of the chief psychiatrist; and	22 23

[s 295]

-
- (b) the making of policies and practice guidelines, and the preparation of the annual report, by the chief psychiatrist; and
 - (c) the investigation of matters by the chief psychiatrist; and
 - (d) the actions the chief psychiatrist may take if there is a serious risk to persons or public safety because of a forensic patient who is the responsibility of an authorised mental health service; and
 - (e) the giving by the chief psychiatrist of particular information to victims of unlawful acts committed by particular patients, and other persons affected by the unlawful acts.

295 Definition for ch 10

In this chapter—

patient means—

- (a) an involuntary patient; or
- (b) a person receiving treatment and care for a mental illness in an authorised mental health service, other than as an involuntary patient, including a person receiving treatment and care under an advance health directive or with the consent of a personal guardian or attorney.

Part 2 Appointment, functions and powers

296 Appointment

- (1) There is a Chief Psychiatrist.
- (2) The chief psychiatrist is appointed by the Governor in Council under this Act and not the *Public Service Act 2008*.

[s 297]

(3)	The chief psychiatrist must be a psychiatrist.	1
297	Resignation	2
	The chief psychiatrist may resign by signed notice given to the Minister.	3 4
298	Termination of appointment	5
(1)	The Governor in Council may terminate the appointment of the chief psychiatrist if the Governor in Council is satisfied the chief psychiatrist—	6 7 8
(a)	has become incapable of satisfactorily performing the chief psychiatrist’s functions; or	9 10
(b)	has performed the chief psychiatrist’s functions carelessly, incompetently or inefficiently; or	11 12
(c)	has been guilty of misconduct that could warrant dismissal from the public service if the chief psychiatrist were a public service officer.	13 14 15
(2)	The Governor in Council must terminate the appointment of the chief psychiatrist if the chief psychiatrist—	16 17
(a)	is no longer eligible for appointment as the chief psychiatrist; or	18 19
(b)	is convicted of an indictable offence.	20
299	Functions and powers	21
(1)	The chief psychiatrist has the following functions—	22
(a)	to the extent practicable, ensuring the protection of the rights of patients under this Act while balancing their rights with the rights of others;	23 24 25
(b)	to the extent practicable, ensuring the involuntary examination, assessment, treatment, care and detention of persons under this Act complies with this Act;	26 27 28

(c)	facilitating the proper and efficient administration of this Act;	1 2
(d)	monitoring and auditing compliance with this Act;	3
(e)	promoting community awareness and understanding of this Act;	4 5
(f)	advising and reporting to the Minister on any matter relating to the administration of this Act—	6 7
	(i) on the chief psychiatrist’s own initiative; or	8
	(ii) on the written request of the Minister;	9
(g)	preparing and giving to the Minister a report on the competencies the chief psychiatrist considers necessary for a health practitioner to perform a function or exercise a power of an authorised doctor.	10 11 12 13
(2)	Also, the chief psychiatrist has the functions and powers given to the chief psychiatrist under this or another Act.	14 15
(3)	Also, the chief psychiatrist may do all things necessary or convenient to be done to perform the chief psychiatrist’s functions.	16 17 18
300	Independence of chief psychiatrist	19
(1)	In performing a function or exercising a power, the chief psychiatrist is not under the control of the Minister or another person.	20 21 22
(2)	Despite subsection (1), the Minister may give the chief psychiatrist a direction under section 310.	23 24
301	Delegation	25
(1)	The chief psychiatrist may delegate a function of the chief psychiatrist to an appropriately qualified—	26 27
	(a) public service employee in the department; or	28
	(b) health service employee.	29

[s 302]

- (2) Despite subsection (1), the chief psychiatrist may delegate a function of the chief psychiatrist under a prescribed provision only to an appropriately qualified—
- (a) senior executive employed in the department; or
 - (b) health executive employed by a Hospital and Health Service.
- (3) In this section—
- function* includes a power.
- prescribed provision* means—
- (a) part 3; or
 - (b) section 311(2)(a) or (b); or
 - (c) chapter 11, part 2; or
 - (d) section 330.
- 302 Power to require administrator to give documents or information**
- (1) For the performance of the chief psychiatrist’s functions, the chief psychiatrist may, by written notice, require the administrator of an authorised mental health service to give to the chief psychiatrist—
- (a) a stated document (including a health record), or a copy of a stated document, about a patient receiving treatment and care in the service or another document relevant to the performance of the chief psychiatrist’s functions; or
 - (b) stated information about—
 - (i) a patient who has been examined or assessed, or is being examined or assessed, in the service; or
 - (ii) a patient who has received, or is receiving, treatment in the service; or
 - (iii) another matter relevant to the performance of the chief psychiatrist’s functions.

-
- (2) The notice must state the day (the *stated day*) on which the document, record or information is to be given. 1
2
- (3) The stated day must be a reasonable time after the notice is given. 3
4
- (4) The administrator must comply with the notice. 5
- (5) If a document is given to the chief psychiatrist, the chief psychiatrist— 6
7
- (a) may inspect it and make copies of, or take extracts from, the document if it is relevant to the performance of the chief psychiatrist’s functions; and 8
9
10
- (b) for an original document—must return it to the administrator within a reasonable time after it is given. 11
12

Part 3 Policies, practice guidelines and annual report 13
14

303 Making policies or practice guidelines 15

- (1) The chief psychiatrist must make a policy about each of the following— 16
17
- (a) the application of the treatment criteria to patients and less restrictive ways for patients to receive treatment and care for their mental illness, including ways of assessing the capacity of patients to consent to being treated and whether the capacity is stable; 18
19
20
21
22
- (b) the way in which records for patients are to be kept; 23
- (c) the management of complaints by patients and their nominated support persons, family, carers and other support persons in relation to the treatment and care of patients; 24
25
26
27

[s 303]

- (d) the way in which patients and interested persons for patients may request the administrator of an authorised mental health service to obtain a second opinion about the treatment and care of the patient; 1
2
3
4
 - (e) the treatment and care of forensic patients and the assessment and management of risks relating to forensic patients receiving treatment in the community; 5
6
7
 - (f) without limiting paragraph (e), the treatment and care of forensic patients whose forensic order was made on a reference in relation to a prescribed offence allegedly committed by the person, and the assessment and management of risks relating to those forensic patients receiving treatment in the community; 8
9
10
11
12
13
 - (g) the treatment and care of persons subject to treatment support orders; 14
15
 - (h) the minimisation of the risk of patients absconding and processes to be followed in returning patients who have absconded; 16
17
18
 - (i) the competencies necessary for a person to be an authorised doctor or authorised mental health practitioner. 19
20
21
- Note—* 22
- See section 272 for the obligation of the chief psychiatrist to make the restraint, seclusion and other practices policy. 23
24
- (2) Also, the chief psychiatrist may make a policy or practice guideline relating to the administration of this Act, including, for example, about the following— 25
26
27
 - (a) the examination and assessment of persons under this Act; 28
29
 - (b) the treatment and care of patients in authorised mental health services, other than forensic patients or patients subject to treatment support orders; 30
31
32
 - (c) the performance of functions, or exercise of powers, by administrators of authorised mental health services, 33
34

authorised doctors or authorised mental health practitioners;	1 2
(d) the administration of authorised mental health services, including safety and security;	3 4
(e) the preparation of psychiatrist reports and second psychiatrist reports;	5 6
(f) the way in which the tribunal is to be supported in performing its functions, including, for example, providing facilities for proceedings;	7 8 9
(g) the authorisation of treatment in the community;	10
(h) supporting the rights of patients and their nominated support persons, family, carers and other support persons, including the ways in which information is to be communicated to the patients and their support persons;	11 12 13 14 15
(i) the appointment and functions of independent patient rights advisers;	16 17
(j) the support of victims of unlawful acts, close relatives of the victims, and other persons affected by unlawful acts;	18 19
(k) the way in which the chief psychiatrist is to be notified of matters under this Act;	20 21
(l) the information to be recorded or given to the chief psychiatrist about—	22 23
(i) the treatment and care of patients under this Act; and	24 25
(ii) critical incidents relating to patients, including the death of a patient.	26 27
(3) An authorised doctor, authorised mental health practitioner, administrator of an authorised mental health service, or other person performing a function or exercising a power under this Act must comply with a policy or practice guideline.	28 29 30 31

[s 304]

(4)	If a policy or practice guideline is inconsistent with this Act, the policy or practice guideline is invalid to the extent of the inconsistency.	1 2 3
304	Publication of policies and practice guidelines	4
(1)	As soon as practicable after making a policy or practice guideline, the chief psychiatrist must—	5 6
(a)	make the policy or practice guideline publicly available; and	7 8
	<i>Example of making a policy or practice guideline publicly available—</i>	9 10
	publication on a website	11
(b)	give a copy of the policy or practice guideline to the administrator of each authorised mental health service.	12 13
(2)	If a person in an authorised mental health service is required to comply with a policy or practice guideline, the administrator of the service must take reasonable steps to ensure the policy or practice guideline is available to the person.	14 15 16 17 18
(3)	Also, the administrator of an authorised mental health service must ensure a policy or practice guideline relevant to the service is given effect.	19 20 21
305	Annual report	22
(1)	Within 90 days after the end of each financial year, the chief psychiatrist must give the Minister a report on the administration of this Act during the year.	23 24 25
(2)	The report must include the following information for the financial year to which the report relates—	26 27
(a)	a summary of key developments in the administration of this Act;	28 29
(b)	statistical data, generally and for each authorised mental health service, about the following—	30 31

(i) the making of examination authorities;	1
(ii) the making of recommendations for assessment and transfer recommendations;	2 3
(iii) the making and revocation of treatment authorities;	4
(iv) the preparation of psychiatrist reports and second psychiatrist reports;	5 6
(v) the making and revocation of forensic orders and treatment support orders;	7 8
(vi) the use of mechanical restraint and seclusion;	9
(vii) actions taken under part 5 in relation to serious risks to persons or public safety;	10 11
(viii) information notices given under part 6;	12
(c) the number of forensic patients who absconded from each authorised mental health service;	13 14
(d) the details of the appointments of independent patient rights advisers;	15 16
(e) information about compliance with the restraint, seclusion and other practices policy;	17 18
(f) details of directions given, and actions taken, under section 308(1) in relation to recommendations included in an investigation report;	19 20 21
(g) details of directions given under section 310 by the Minister to the chief psychiatrist.	22 23
(3) The report may state any other information the chief psychiatrist considers appropriate.	24 25
(4) The Minister must table a copy of the report in the Legislative Assembly within 14 days after the Minister receives it.	26 27

Part 4	Investigations	1
306	Chief psychiatrist may investigate	2
(1)	The chief psychiatrist may, for the purpose of performing the chief psychiatrist's functions—	3 4
(a)	investigate a matter; or	5
(b)	direct an inspector to investigate a matter.	6
	<i>Note—</i>	7
	See section 553(2) for appointment of an inspector to investigate a matter under this part.	8 9
(2)	An investigation must be completed as quickly as is reasonable in all the circumstances.	10 11
(3)	The chief psychiatrist or inspector may exercise the powers under chapter 14 for the purpose of the investigation.	12 13
(4)	To remove any doubt, it is declared that an investigation under subsection (1) may include an investigation about any matter relating to the treatment and care of any patient in an authorised mental health service.	14 15 16 17
307	Investigation report	18
(1)	After completing an investigation, the chief psychiatrist, or an inspector investigating the matter, must prepare a report on the investigation (an <i>investigation report</i>).	19 20 21
(2)	The investigation report may include recommendations relating to the improvement of the operation of an authorised mental health service.	22 23 24
(3)	The chief psychiatrist may give a copy of the investigation report to a person or entity the subject of the investigation.	25 26

308	Recommendations for improvement	1
(1)	If an investigation report includes recommendations relating to the improvement of the operation of an authorised mental health service, the chief psychiatrist may, by written notice, direct the administrator of the service to—	2 3 4 5
(a)	take action, or particular action, to address the recommendations; and	6 7
(b)	report to the chief psychiatrist about the action taken to address the recommendations.	8 9
(2)	However, before giving the notice, the chief psychiatrist must—	10 11
(a)	give the administrator a written notice (a <i>show cause notice</i>) stating the following—	12 13
(i)	that the chief psychiatrist proposes to direct the administrator to take action, or particular action, to address recommendations included in an investigation report (the <i>proposed action</i>);	14 15 16 17
(ii)	the grounds for the proposed action;	18
(iii)	the facts and circumstances forming the basis for the grounds;	19 20
(iv)	that the administrator may make submissions about the show cause notice to the chief psychiatrist;	21 22
(v)	the date by which the submission must be made; and	23 24
(b)	consider any submissions given in response to the show cause notice.	25 26
(3)	The administrator must comply with a notice under subsection (1) unless the administrator has a reasonable excuse.	27 28

[s 309]

Part 5	Serious risks to persons or public safety	1 2
309	Purpose of pt 5	3
	This purpose of this part is to provide for the actions the chief psychiatrist may take in relation to a forensic patient for whom an authorised mental health service is responsible (a <i>relevant forensic patient</i>) if there is a serious risk to the life, health or safety of a person or to public safety because of a matter relating to the relevant forensic patient.	4 5 6 7 8 9
310	Minister may direct chief psychiatrist to review matter	10
(1)	This section applies if the Minister considers—	11
(a)	a matter has arisen in relation to 1 or more relevant forensic patients; and	12 13
(b)	there is a serious risk to the life, health or safety of a person or to public safety because of the matter.	14 15
(2)	The Minister may direct the chief psychiatrist to—	16
(a)	immediately review the matter and serious risk to decide—	17 18
(i)	whether action is necessary to remove, or to control or manage, the risk; and	19 20
(ii)	whether there are systemic issues that need to be addressed to remove the risk; and	21 22
(b)	consider taking action under section 311(2) to address the matter and stop the serious risk recurring; and	23 24
(c)	report to the Minister—	25
(i)	on the outcome of the review; and	26
(ii)	if action is taken as a result of the review—on the action taken.	27 28

(3)	To remove any doubt, it is declared that the Minister’s power under this section—	1 2
(a)	is limited to directing the chief psychiatrist to do a thing mentioned in subsection (2)(a), (b) or (c); and	3 4
(b)	does not allow the Minister to direct the chief psychiatrist to take action, or any particular action, in relation to the matter or serious risk.	5 6 7
311	Actions chief psychiatrist may take	8
(1)	This section applies—	9
(a)	if the chief psychiatrist considers—	10
(i)	a matter has arisen in relation to 1 or more relevant forensic patients; and	11 12
(ii)	there is a serious risk to the life, health or safety of a person or to public safety because of the matter; and	13 14 15
(b)	whether or not a direction has been given to the chief psychiatrist about the matter or risk under section 310.	16 17
(2)	The chief psychiatrist may do any of the following—	18
(a)	order the suspension of limited community treatment for a relevant forensic patient, or each member of a class of relevant forensic patients, for a stated period of not more than 7 days;	19 20 21 22
(b)	order the category of the forensic order for a relevant forensic patient, or each member of a class of relevant forensic patients, to be changed to inpatient for a stated period of not more than 7 days;	23 24 25 26
(c)	order an administrator of an authorised mental health service to report to the chief psychiatrist on the circumstances that led to the matter and serious risk;	27 28 29
(d)	review, or order an administrator of an authorised mental health service to review and report to the chief psychiatrist on, any treatment and care provided to a	30 31 32

[s 312]

relevant forensic patient or class of relevant forensic patients to the extent it relates to the matter or serious risk or a similar matter or serious risk that might arise in the future;	1 2 3 4
(e) review any policies or practice guidelines about treatment in the community;	5 6
(f) take any other action necessary to prevent a similar matter or serious risk arising.	7 8
(3) Before making an order under subsection (2)(a) or (b), the chief psychiatrist must consult with the administrator of each authorised mental health service likely to be affected by the order about the likely effect of the order on—	9 10 11 12
(a) the operations of the authorised mental health service; and	13 14
(b) the relevant forensic patients proposed to be subject to the order.	15 16
312 Chief psychiatrist’s order	17
(1) This section applies if the chief psychiatrist makes an order under section 311(2)(a) or (b) in relation to a relevant forensic patient or class of relevant forensic patients.	18 19 20
(2) The chief psychiatrist’s order must include the following—	21
(a) if the order relates to a particular relevant forensic patient—the name of the patient;	22 23
(b) if the order relates to a class of relevant forensic patients—sufficient details to identify the class;	24 25
<i>Example of a class of relevant forensic patients for paragraph (b)—</i>	26
all relevant forensic patients in an inpatient unit of a particular authorised mental health service who are receiving limited community treatment	27 28 29
(c) if the order is made under section 311(2)(a)—the period of the suspension of limited community treatment;	30 31

[s 313]

-
- (d) if the order is made under section 311(2)(b)—the period for which the category of the forensic order is changed to inpatient; 1
2
3
- (e) if the order requires a relevant forensic patient, or each member of a class of relevant forensic patients, to return to an authorised mental health service—the name of the service and the time or date by which the patient must return to the service. 4
5
6
7
8
- (3) For subsection (2)(e), the order may state an authorised mental health service other than the patient’s treating health service. 9
10
11
- (4) The chief psychiatrist must give each relevant forensic patient subject to the order a copy of the order and a written notice stating— 12
13
14
- (a) that the patient may appeal to the tribunal against the chief psychiatrist’s decision to make the order; and 15
16
- (b) the period within which the patient may appeal to the tribunal; and 17
18
- (c) how the appeal is made. 19
- 313 Chief psychiatrist may vary period or end order** 20
- (1) The chief psychiatrist may, for an order made under section 311(2)(a) or (b), at any time while the order is in force— 21
22
- (a) extend, or further extend, the stated period for a period of not more than 7 days if the chief psychiatrist is satisfied the matter or serious risk for which the order was made still exists; or 23
24
25
26
- (b) end the order. 27
- (2) The chief psychiatrist must give written notice of an extension of the stated period, or the ending of the order, to each relevant forensic patient subject to the order. 28
29
30
- (3) If the chief psychiatrist decides to extend the stated period, the notice must state— 31
32

[s 314]

- (a) that the patient may appeal to the tribunal against the chief psychiatrist's decision to extend the period; and
- (b) the period within which the patient may appeal to the tribunal; and
- (c) how the appeal is made.

Part 6 Information notices

Division 1 Preliminary

314 Purpose of pt 6

The purpose of this part is to provide for victims of unlawful acts committed by relevant patients, and other persons affected by the unlawful act, to obtain particular information about the relevant patient.

Note—

See section 325 for the application of this part to forensic disability clients.

315 Definitions for pt 6

In this part—

applicant's nominee see section 316(2)(b).

information notice, relating to a relevant patient, is a notice that entitles the applicant for the notice, or the applicant's nominee, to receive information mentioned in schedule 1 about the relevant patient from the chief psychiatrist.

relevant patient means a patient of an authorised mental health service who is subject to—

- (a) a forensic order; or

- (b) a treatment support order. 1

Division 2 **Application, amendment and** 2
 revocation 3

316 **Application** 4

- (1) An application for an information notice relating to a relevant 5
patient may be made to the chief psychiatrist by— 6
- (a) a victim of the relevant unlawful act in relation to the 7
relevant patient’s forensic order or treatment support 8
order; or 9
- (b) a close relative of a victim mentioned in paragraph (a); 10
or 11
- (c) another individual who— 12
- (i) has suffered harm because of the relevant unlawful 13
act in relation to the relevant patient’s forensic 14
order or treatment support order; and 15
- (ii) has a sufficient personal interest in receiving 16
information under the notice about the relevant 17
patient. 18
- (2) The application must— 19
- (a) be in the approved form; and 20
- (b) state whether the applicant, or another person (the 21
applicant’s nominee), will be entitled to receive 22
information under the notice; and 23
- (c) be accompanied by a statutory declaration by the 24
applicant and the applicant’s nominee, if any, that the 25
applicant or applicant’s nominee will not publish 26
information received under the notice in contravention 27
of section 324. 28

[s 317]

317	Decision on application	1
(1)	The chief psychiatrist must decide to approve or refuse to approve the application—	2 3
(a)	if the application is made by an applicant mentioned in section 316(1)(a) or (b)—within 14 days after receiving the application; or	4 5 6
(b)	otherwise—within 28 days after receiving the application.	7 8
(2)	The chief psychiatrist may refuse to approve the application if the chief psychiatrist is satisfied—	9 10
(a)	the application is frivolous or vexatious; or	11
(b)	for an application made under section 316(1)(c)—the applicant is not an individual mentioned in section 316(1)(c); or	12 13 14
(c)	disclosure of information under the notice is likely to—	15
(i)	result in serious harm to the relevant patient’s health or welfare; or	16 17
(ii)	put the safety of the relevant patient or someone else at serious risk; or	18 19
(d)	a previous information notice obtained by the applicant was revoked under section 321(1)(b).	20 21
(3)	For subsection (2)(b), in deciding whether the applicant has a sufficient personal interest in receiving information under the notice, the chief psychiatrist must have regard to the following matters—	22 23 24 25
(a)	whether the relevant patient is a risk to the safety and welfare of the person;	26 27
(b)	whether it is likely the relevant patient will come into contact with the person;	28 29
(c)	the nature of the relevant unlawful act in relation to the relevant patient’s forensic order or treatment support order.	30 31 32

[s 318]

-
- (4) Also, if the application states that the applicant’s nominee will be entitled to receive information under the notice, the chief psychiatrist must not approve the application unless the chief psychiatrist is satisfied the nominee is suitable to receive the information. 1
2
3
4
5
- (5) The chief psychiatrist must give the applicant written notice of the decision within 7 days after making it. 6
7
- (6) If the decision is to approve the application, the written notice must state— 8
9
- (a) the name of the person entitled to receive information under the information notice; and 10
11
- (b) if the person entitled to receive information under the information notice is the applicant’s nominee—that the nominee is entitled to receive the information only for the purpose of providing the information to the applicant. 12
13
14
15
16
- (7) If the decision is to refuse to approve the application, the written notice must state— 17
18
- (a) the reasons for the decision; and 19
- (b) that the applicant may appeal to the tribunal against the decision within 28 days after the applicant receives the notice; and 20
21
22
- (c) how the appeal is made. 23

318 Right to receive information under notice 24

- (1) This section applies if a person is entitled to receive information about a relevant patient under an information notice. 25
26
27
- (2) The chief psychiatrist must ensure the person receives the information mentioned in schedule 1 about the relevant patient. 28
29
30
- (3) The information must be given to the person— 31

[s 319]

- (a) for information mentioned in schedule 1, section 5—as soon as practicable after the chief psychiatrist becomes aware of the information; or
 - (b) otherwise—within 14 days after the chief psychiatrist becomes aware of the information.
- (4) However, the chief psychiatrist must not disclose under subsection (2)—
- (a) details about the specific treatment and care provided to the relevant patient, including, for example, the type of medication being given to the relevant patient; or
 - (b) the address of a place in the community at which the relevant patient is living.
- (5) The chief psychiatrist may enter into arrangements with a victim support service to enable the service, on behalf of the chief psychiatrist, to give the information to the person.

319 Amendment of notice to change applicant’s nominee

- (1) A person who is entitled to receive information about a relevant patient under an information notice may apply to the chief psychiatrist to amend the notice by adding, or changing, the applicant’s nominee.
- (2) The application must be in the approved form and be accompanied by—
- (a) the name of the applicant’s proposed nominee; and
 - (b) a statutory declaration by the nominee stating that the nominee will not publish information received under the notice in contravention of section 324.
- (3) The chief psychiatrist must decide to approve or refuse to approve the application within 14 days after receiving the application.
- (4) The chief psychiatrist must approve the application if the chief psychiatrist is satisfied the nominee is suitable to receive information under the notice.

[s 320]

-
- (5) The chief psychiatrist must give the applicant notice of the decision within 7 days after making it. 1
2
- (6) If the decision is to approve the application, the chief psychiatrist must give the applicant an amended information notice. 3
4
5
- (7) If the decision is to refuse to approve the application, the notice must state— 6
7
- (a) the reasons for the decision; and 8
- (b) that the applicant may appeal to the tribunal against the decision within 28 days after the applicant receives the notice; and 9
10
11
- (c) how the appeal is made. 12

320 Mandatory revocation 13

- (1) The chief psychiatrist must revoke an information notice relating to a relevant patient if— 14
15
- (a) the tribunal revokes the relevant patient’s forensic order and a treatment support order is not made for the patient; or 16
17
18
- (b) the tribunal revokes the relevant patient’s treatment support order; or 19
20
- (c) the relevant patient’s order ends in a way other than by revocation by— 21
22
- (i) the Mental Health Court under section 166(2)(b); or 23
24
- (ii) the tribunal; or 25
- (d) the person entitled to receive information under the notice asks the chief psychiatrist to revoke the notice; or 26
27
- (e) the chief psychiatrist is satisfied disclosure of information under the notice is likely to— 28
29
- (i) result in serious harm to the relevant patient’s health or welfare; or 30
31

[s 320]

- (ii) put the safety of the relevant patient or someone else at serious risk; or 1
2
 - (f) subject to subsection (5), the relevant patient has been transferred under chapter 12, part 10, division 2 to an interstate mental health service. 3
4
5
- (2) The chief psychiatrist must give written notice of the decision to revoke the information notice to the person entitled to receive information under the notice within 7 days after the decision is made. 6
7
8
9
- (3) The written notice must state— 10
 - (a) the reasons for the decision; and 11
 - (b) that the person may appeal to the tribunal against the decision within 28 days after the person receives the notice; and 12
13
14
 - (c) how the appeal is made. 15
- (4) Despite subsection (1), if the relevant patient’s forensic order or treatment support order is revoked as mentioned in subsection (1)(a) or (b) and is reinstated on appeal— 16
17
18
 - (a) the information notice is reinstated on the day the forensic order or treatment support order is reinstated; and 19
20
21
 - (b) the chief psychiatrist must give notice of the reinstatement of the information notice to the person entitled to receive information under the notice within 7 days after the reinstatement. 22
23
24
25
- (5) Despite subsection (1), if the relevant patient returns to Queensland before the patient’s forensic order or treatment support order ends under section 526— 26
27
28
 - (a) the information notice is reinstated on the day the relevant patient returns to Queensland; and 29
30
 - (b) the chief psychiatrist must give notice of the reinstatement of the information notice to the person 31
32

[s 321]

entitled to receive information under the notice within 7 1
days after the reinstatement. 2

321 Discretionary revocation 3

- (1) The chief psychiatrist may revoke an information notice 4
relating to a relevant patient if— 5
- (a) the chief psychiatrist is unable, after making reasonable 6
efforts, to locate the person entitled to receive 7
information under the notice; or 8
 - (b) the person entitled to receive information under the 9
notice has contravened section 324. 10
- (2) However, before revoking an information notice under 11
subsection (1)(b), the chief psychiatrist must give the person a 12
reasonable opportunity to make a submission to the chief 13
psychiatrist about why the notice should not be revoked. 14
- (3) The chief psychiatrist must give written notice of the decision 15
to revoke the information notice to the person entitled to 16
receive information under the notice within 7 days after 17
making it. 18
- (4) The written notice must state— 19
- (a) the reasons for the decision; and 20
 - (b) that the person may appeal to the tribunal against the 21
decision within 28 days after the person receives the 22
notice; and 23
 - (c) how the appeal is made. 24

[s 322]

Division 3	Miscellaneous	1
322	Tribunal must give particular information to chief psychiatrist about relevant patient	2 3
(1)	This section applies if the tribunal makes a decision that increases the extent of treatment in the community received by a relevant patient.	4 5 6
(2)	The tribunal must, for the purpose of enabling the chief psychiatrist to comply with section 318(2), give the chief psychiatrist a written notice containing a brief explanation of the decision.	7 8 9 10
(3)	The chief psychiatrist may use the written notice only for the purpose for which it is given.	11 12
(4)	To remove any doubt, it is declared that the written notice is not a statement of reasons for the tribunal's decision.	13 14
323	Telling relevant patient about information notice	15
(1)	This section applies if an information notice relating to a relevant patient is made.	16 17
(2)	The chief psychiatrist, or another person performing a function under this Act in relation to the relevant patient, must not tell the relevant patient about the making of the notice, or any other matter that may identify the applicant for the information notice.	18 19 20 21 22
(3)	However, the chief psychiatrist or other person may tell the relevant patient the prescribed information about the information notice if—	23 24 25
(a)	the applicant for the information notice requests that the prescribed information be given to the relevant patient; and	26 27 28
(b)	the chief psychiatrist, or an authorised doctor, considers telling the relevant patient the prescribed information is in the patient's best interests.	29 30 31

(4)	In this section—	1
	<i>prescribed information</i> , about an information notice,	2
	means—	3
(a)	the fact of the making of the notice; or	4
(b)	the fact of the making of the notice and the name of the applicant for the information notice.	5
		6
324	Misuse of information made available under an information notice	7
		8
(1)	This section applies in relation to information a person has because it has been made available to a person under an information notice.	9
		10
		11
(2)	The person must not publish the information unless the publication is required or permitted under the information notice, or an Act or law.	12
		13
		14
	Maximum penalty—200 penalty units.	15
325	Application of part to forensic disability client	16
	This part applies in relation to a forensic disability client as if—	17
		18
(a)	a reference in the part to a relevant patient were a reference to a forensic disability client; and	19
		20
(b)	a reference in the part to the chief psychiatrist were a reference to the director of forensic disability; and	21
		22
(c)	a reference in the part to an authorised mental health service were a reference to the forensic disability service.	23
		24
		25

Chapter 11	Authorised mental health services	1
		2
Part 1	Preliminary	3
326	Purpose of ch 11	4
	The purpose of this chapter is to provide for—	5
	(a) the declaration of authorised mental health services; and	6
	(b) the appointment, functions and powers of administrators of authorised mental health services, authorised doctors and authorised mental health practitioners; and	7 8 9
	(c) the transfer of the responsibility for particular patients—	10
	(i) between authorised mental health services; and	11
	(ii) between an authorised mental health service and the forensic disability service; and	12 13
	(iii) between an authorised mental health service and an interstate mental health service; and	14 15
	<i>Note—</i>	16
	See chapter 12, part 10 for approvals to transfer forensic and other patients into and out of Queensland.	17 18
	(d) powers of authorised persons in relation to transporting persons under this Act; and	19 20
	(e) matters relating to the security of authorised mental health services and other particular services.	21 22

Part 2	Declaration of authorised mental health services	1 2
327	Declaration of authorised mental health service	3
(1)	The chief psychiatrist may, by gazette notice, declare a health service, or part of a health service, providing treatment and care to persons who have a mental illness to be an authorised mental health service.	4 5 6 7
(2)	However, if the health service is not a public sector health service, the declaration may be made only with the written agreement of the health service.	8 9 10
(3)	The declaration may include conditions the chief psychiatrist considers appropriate, including, for example, a condition to facilitate the provision of treatment and care to persons who have a mental illness in rural or remote areas.	11 12 13 14
328	Declaration of high security unit	15
	The chief psychiatrist may, by gazette notice, declare a public sector mental health service, or part of a public sector mental health service, to be a high security unit.	16 17 18
329	Declaration of authorised mental health service (rural and remote)	19 20
(1)	The chief psychiatrist may, by gazette notice, declare an authorised mental health service, or part of an authorised mental health service, to be an authorised mental health service (rural and remote).	21 22 23 24
(2)	The chief psychiatrist may act under subsection (1) only if satisfied the authorised mental health service is in a rural or remote area.	25 26 27

[s 330]

Part 3	Administrators of authorised mental health services	1 2
330	Appointment	3
(1)	The chief psychiatrist may, by gazette notice, appoint a person to be the administrator of an authorised mental health service.	4 5
(2)	The appointment may identify the administrator by name or by reference to the holder of a stated office.	6 7
331	Functions	8
(1)	The administrator of an authorised mental health service has the following functions—	9 10
(a)	to the extent practicable, ensuring the operation of the authorised mental health service complies with this Act;	11 12
(b)	taking reasonable steps to ensure patients of the authorised mental health service receive appropriate treatment and care;	13 14 15
(c)	notifying patients of the authorised mental health service, the chief psychiatrist, the tribunal and others of decisions and other matters as required under this Act;	16 17 18
(d)	appointing authorised doctors and authorised mental health practitioners.	19 20
(2)	Also, the administrator has the other functions given to the administrator under this or another Act.	21 22
332	Powers	23
(1)	The administrator of an authorised mental health service has the powers given under this Act.	24 25
(2)	Also, the administrator may do all things necessary or convenient to be done to perform the administrator’s functions.	26 27 28

333	Register of authorised doctors and authorised mental health practitioners	1 2
	The administrator of an authorised mental health service must keep a register of persons holding office as an authorised doctor, authorised mental health practitioner, or health practitioner appointed under section 339 to perform particular functions, appointed by the administrator.	3 4 5 6 7
334	Record of relevant patients	8
(1)	The administrator of an authorised mental health service must keep a record of each relevant patient of the service.	9 10
(2)	Without limiting subsection (1), the record must contain the following information—	11 12
(a)	the day the person becomes a relevant patient of the authorised mental health service;	13 14
(b)	the day the person stops being a relevant patient;	15
(c)	details of the basis on which the person is a relevant patient;	16 17
(d)	details of any change to the basis on which the person is a relevant patient and the day the change happens;	18 19
(e)	the category of a treatment authority, forensic order or treatment support order for the relevant patient and details of any limited community treatment;	20 21 22
(f)	the conditions of a treatment authority, forensic order or treatment support order for the relevant patient;	23 24
(g)	details of temporary absences approved under section 221 for the relevant patient and the reason for the absences.	25 26 27
(3)	In this section—	28
	<i>relevant patient</i> means an involuntary patient or classified patient (voluntary).	29 30

[s 335]

335	Delegation	1
(1)	The administrator of an authorised mental health service may delegate the administrator’s functions under this Act to an appropriately qualified health service employee of the service.	2 3 4
(2)	In this section—	5
	<i>function</i> includes a power.	6
Part 4	Authorised doctors and authorised mental health practitioners	7 8 9
Division 1	Appointment, functions and powers	10
336	Appointment of authorised doctor	11
(1)	The administrator of an authorised mental health service may, by instrument in writing, appoint a doctor as an authorised doctor.	12 13 14
(2)	However, the administrator may appoint a person under subsection (1) only if satisfied the person has the competencies, stated in a policy, necessary to be an authorised doctor.	15 16 17 18
337	When administrator is authorised doctor	19
	If the administrator of an authorised mental health service is a psychiatrist, the administrator is an authorised doctor.	20 21

338	Appointment of authorised mental health practitioner	1
(1)	The administrator of an authorised mental health service may, by instrument in writing, appoint a health practitioner as an authorised mental health practitioner.	2 3 4
(2)	However, the administrator may appoint a person under subsection (1) only if satisfied the person has the competencies, stated in a policy, necessary to be an authorised mental health practitioner.	5 6 7 8
339	Appointment of health practitioner to perform particular functions of authorised doctor	9 10
(1)	The administrator of an authorised mental health service may appoint a health practitioner of a class prescribed by regulation to perform the functions or exercise the powers of an authorised doctor that are prescribed by regulation for the class of health practitioner.	11 12 13 14 15
(2)	However, the administrator may appoint a person under subsection (1) only if satisfied the person is appropriately qualified.	16 17 18
(3)	Before recommending to the Governor in Council the making of a regulation under subsection (1), the Minister must be of the opinion that the class of health practitioner proposed to be prescribed has the competencies the chief psychiatrist considers necessary to perform the functions or exercise the powers of an authorised doctor proposed to be prescribed for the class.	19 20 21 22 23 24 25
(4)	In this section— <i>health practitioner</i> means a health practitioner other than a doctor.	26 27 28
340	Appointment conditions and limit on powers	29
(1)	This section applies to each of the following—	30
(a)	an authorised doctor appointed under section 336;	31

[s 341]

- (b) an authorised mental health practitioner appointed under section 338; 1
2
 - (c) a health practitioner appointed under section 339 to perform particular functions. 3
4
 - (2) The person holds office— 5
 - (a) on any conditions stated in— 6
 - (i) the person’s instrument of appointment; or 7
 - (ii) a signed notice given to the person; and 8
 - (b) for an authorised doctor or authorised mental health practitioner—on the condition that the doctor or authorised mental health practitioner continues to have the competencies, stated in a policy, necessary to be an authorised doctor or authorised mental health practitioner. 9
10
11
12
13
14
 - (3) The instrument of appointment or signed notice given to the person may limit the person’s powers. 15
16
 - (4) In this section— 17
 - signed notice*, given to a person, means a notice signed by the administrator of the authorised mental health service who appointed the person. 18
19
20
- 341 When office ends** 21
- (1) This section applies to each of the following— 22
 - (a) an authorised doctor appointed under section 336; 23
 - (b) an authorised mental health practitioner appointed under section 338; 24
25
 - (c) a health practitioner appointed under section 339 to perform particular functions. 26
27
 - (2) The office of the person under the appointment ends if any of the following happens— 28
29

-
- (a) for an authorised doctor appointed under section 336—the authorised doctor stops being a doctor; 1
2
- (b) for an authorised mental health practitioner appointed under section 338—the authorised mental health practitioner stops being a health practitioner of the type that was the basis for the person’s appointment; 3
4
5
6
- (c) for a health practitioner appointed under section 339 to perform particular functions—the health practitioner stops being a health practitioner of the class prescribed by regulation that was the basis for the person’s appointment; 7
8
9
10
11
- (d) the term of office stated in a condition of office ends; 12
- (e) the office ends under another condition of office; 13
- (f) the chief psychiatrist— 14
- (i) is satisfied the person is unable to perform the functions of the office, including, for example, because the person does not have the competencies, stated in a policy, necessary for the office; and 15
16
17
18
19
- (ii) gives written notice to the person stating the person stops holding office on a date stated in the notice; 20
21
- (g) the person resigns by written notice given to the administrator of the authorised mental health service who appointed the person. 22
23
24
- (3) Subsection (2) does not limit the ways in which the person may stop holding office. 25
26
- (4) In this section— 27
- condition of office* means a condition under which a person mentioned in subsection (1) holds office. 28
29

342 Functions and powers 30

Subject to section 340, an authorised doctor, authorised mental health practitioner, or health practitioner appointed 31
32

[s 343]

under section 339 to perform particular functions, has the 1
functions and powers given under this Act. 2

343 Requirement to give notice of particular decisions 3

- (1) This section applies if an authorised doctor, authorised mental 4
health practitioner, or health practitioner appointed under 5
section 339 to perform particular functions (each a 6
decision-maker) makes a decision under this Act in relation to 7
an involuntary patient or classified patient (voluntary). 8
- (2) The decision-maker must give written notice of the decision to 9
the administrator of the patient’s treating health service. 10

Division 2 Identity cards 11

344 Issue of identity card 12

- (1) The administrator of an authorised mental health service must 13
issue an identity card to each of the following persons 14
appointed by the administrator— 15
- (a) an authorised doctor; 16
- (b) an authorised mental health practitioner; 17
- (c) a health practitioner appointed under section 339 to 18
perform particular functions. 19
- (2) The identity card must— 20
- (a) contain a recent photo of the person; and 21
- (b) identify the person as an authorised doctor, authorised 22
mental health practitioner, or health practitioner 23
appointed to perform particular functions, under this 24
Act; and 25
- (c) state an expiry date for the card. 26
- (3) This section does not prevent the issue of a single identity 27
card to a person for this Act and other purposes. 28

345	Production or display of identity card	1
(1)	In exercising a power in relation to a person in the person's presence, an authorised doctor, authorised mental health practitioner, or health practitioner appointed under section 339 to perform particular functions (each a <i>practitioner</i>), must—	2 3 4 5 6
(a)	produce the practitioner's identity card for the person's inspection before exercising the power; or	7 8
(b)	have the identity card displayed so it is clearly visible to the person when exercising the power.	9 10
(2)	However, if it is not practicable to comply with subsection (1), the practitioner must produce the identity card for the person's inspection at the first reasonable opportunity.	11 12 13
346	Return of identity card	14
	If the office of a person mentioned in section 344(1) ends, the person must return the person's identity card to the administrator of the authorised mental health service who appointed the person within 21 days after the office ends, unless the person has a reasonable excuse.	15 16 17 18 19
	Maximum penalty—20 penalty units.	20
Part 5	Transfer of patients	21
Division 1	Preliminary	22
347	Purpose of pt 5	23
	The purpose of this part is to provide for the transfer of the responsibility for particular patients—	24 25
(a)	between authorised mental health services; and	26

[s 348]

- (b) between an authorised mental health service and the forensic disability service; and 1
2
 - (c) between an authorised mental health service and an interstate mental health service. 3
4
- Note—* 5
- See chapter 12, part 10 for approvals to transfer forensic and other patients into and out of Queensland. 6
7

348 Definition for pt 5 8

- In this part— 9
- transfer considerations*, for a person, means— 10
- (a) the person’s mental state and psychiatric history; and 11
 - (b) the person’s treatment and care needs; and 12
 - (c) whether the transfer is in the best interests of the person, including, for example, enabling the person to be closer to the person’s family, carers or other support persons; and 13
14
15
16
 - (d) if relevant, security requirements for the person. 17

Division 2 Authorised mental health service transfers 18
19

349 Transfer between services by agreement of administrators 20
21

- (1) This section applies to a person who is an involuntary patient, or a classified patient (voluntary), of an authorised mental health service. 22
23
24
- (2) The administrator of the authorised mental health service (the *first AMHS*) may agree with the administrator of another authorised mental health service (the *second AMHS*) to transfer the responsibility for the person from the first AMHS to the second AMHS. 25
26
27
28
29

-
- (3) In deciding whether to agree to a transfer under subsection (2), the administrator of the first AMHS and the administrator of the second AMHS must have regard to the transfer considerations for the person. 1
2
3
4
- (4) If any of the following circumstances apply, the transfer must not happen unless the chief psychiatrist has approved the transfer in writing— 5
6
7
- (a) the person is subject to a forensic order; 8
- (b) the person is subject to a judicial order; 9
- (c) the person is subject to a treatment authority but is not a classified patient, and the transfer is to a high security unit; 10
11
12
- (d) the person is a minor, and the transfer is to a high security unit. 13
14
- (5) In deciding whether to approve a transfer under subsection (4), the chief psychiatrist must have regard to the transfer considerations for the person. 15
16
17
- (6) If a person transferred under this section is a classified patient and the chief psychiatrist is not required to approve the transfer under subsection (4), the administrator of the first AMHS must give written notice of the transfer to the chief psychiatrist within 7 days after the transfer. 18
19
20
21
22
- 350 Transfer between services by requirement of chief psychiatrist** 23
24
- (1) This section applies to a person who is an involuntary patient, or a classified patient (voluntary), of an authorised mental health service. 25
26
27
- (2) The chief psychiatrist may, by written notice, require the administrator of the authorised mental health service to transfer the responsibility for the person from the authorised mental health service to another authorised mental health service. 28
29
30
31
32

[s 351]

- (3) In deciding whether to require a transfer under this section, the chief psychiatrist must have regard to the transfer considerations for the person. 1
2
3

Division 3 Forensic disability service transfers 4

351 Transfer between authorised mental health service and forensic disability service 5 6

- (1) This section applies to a person subject to a forensic order (disability). 7
8
- (2) The chief psychiatrist and the director of forensic disability may agree to transfer the responsibility for the person from an authorised mental health service to the forensic disability service, or vice versa. 9
10
11
12
- (3) In deciding whether to agree to a transfer under subsection (2), the chief psychiatrist and the director of forensic disability must have regard to— 13
14
15
- (a) the transfer considerations for the person; and 16
- (b) the person’s intellectual disability. 17

Division 4 Interstate transfers 18

352 Transfer of person subject to treatment authority to another State 19 20

- (1) This section applies to a person subject to a treatment authority who is a patient of an authorised mental health service (the *AMHS*). 21
22
23
- (2) The administrator of the AMHS may agree with a responsible officer of an interstate mental health service to transfer the responsibility for the person from the AMHS to the interstate mental health service if the administrator is satisfied— 24
25
26
27

[s 353]

-
- (a) the transfer is in the best interests of the person, including, for example, enabling the person to be closer to the person's family, carers or other support persons; and
- (b) appropriate treatment and care is available for the person at the interstate mental health service.
- (3) The person's treatment authority ends when the person leaves Queensland.
- 353 Transfer of person subject to interstate order from another State**
- (1) This section applies to a person subject to an interstate order who is a patient of an interstate mental health service.
- (2) The administrator of an authorised mental health service (the *AMHS*) may agree with a responsible officer of the interstate mental health service to transfer the responsibility for the person from the interstate mental health service to the AMHS if the administrator of the AMHS is satisfied—
- (a) the transfer is in the best interests of the person, including, for example, enabling the person to be closer to the person's family, carers or other support persons; and
- (b) appropriate treatment and care is available for the person at the AMHS; and
- (c) an authorised doctor is likely to consider, on the person's admission to the AMHS, that—
- (i) the treatment criteria apply to the person; and
- (ii) there is no less restrictive way for the person to receive treatment and care for the person's mental illness.
- (3) On the person's admission to the AMHS, an authorised doctor must make an assessment of the person to decide—
- (a) whether the treatment criteria apply to the person; and
-

[s 354]

- (b) whether there is a less restrictive way for the person to receive treatment and care for the person's mental illness. 1
2
3
- (4) The person may be detained for assessment in the AHMS for a period of not more than 6 hours starting when the person is admitted to the AHMS. 4
5
6
- (5) If, on making the assessment, the authorised doctor is satisfied the treatment criteria apply to the person and there is no less restrictive way for the person to receive treatment and care for the person's mental illness, the authorised doctor may decide to make an authority for the person. 7
8
9
10
11
- (6) The authority is taken to be a treatment authority made under section 49 by the authorised doctor for the person. 12
13
- (7) In this section— 14
interstate order means an order, however described, made under a corresponding law that provides for similar matters to a treatment authority. 15
16
17

Division 5 General provisions 18

354 Responsibility for person 19

- (1) If the responsibility for a person is transferred, under division 2 or 3, from a service to another service, the responsibility for the person's treatment and care under the person's order or authority is transferred from the administrator of the first service to the administrator of the second service. 20
21
22
23
24
- (2) An order or authority to which the person is subject, under this Act or the Forensic Disability Act, is otherwise affected by the transfer only to the extent this Act or the Forensic Disability Act expressly provides. 25
26
27
28
- (3) In this section— 29
service means an authorised mental health service or the forensic disability service. 30
31

355	Power to transport	1
(1)	This section applies if the responsibility for a person is transferred, under this part, from an entity to another entity.	2 3
(2)	An authorised person may transport the person from the first entity to the second entity.	4 5
(3)	If 1 of the entities is the forensic disability service, a person who is authorised under the Forensic Disability Act to transport a forensic disability client under that Act may transport the person to or from the entity.	6 7 8 9
(4)	If 1 of the entities is an interstate mental health service, a person who is authorised under a corresponding law to transport a person may transport the person to or from the entity.	10 11 12 13
356	Notice to tribunal	14
(1)	This section applies if the responsibility for a person is transferred from an authorised mental health service, or the forensic disability service, to another entity.	15 16 17
(2)	The administrator of the authorised mental health service or forensic disability service must give written notice of the transfer to the tribunal within 7 days after the day of the transfer.	18 19 20 21
Part 6	Transport of persons	22
Division 1	Preliminary	23
357	Who is an <i>authorised person</i>	24
(1)	Each of the following is an <i>authorised person</i> —	25
(a)	the administrator of an authorised mental health service;	26

[s 357]

- (b) an ambulance officer; 1
- (c) an authorised doctor; 2
- (d) an authorised mental health practitioner; 3
- (e) a police officer. 4
- (2) Also, if a person is to be transported to or from a corrective services facility or youth detention centre, each of the following is an **authorised person**— 5
6
7
- (a) a corrective services officer for the purpose of taking the person to or from the facility; 8
9
- (b) a youth detention employee for the purpose of taking the person to or from the centre. 10
11
- (3) Also, the administrator of an authorised mental health service may in writing appoint a health service employee of the authorised mental health service as an **authorised person**. 12
13
14
- (4) An authorised person, other than a police officer, is a public official for the *Police Powers and Responsibilities Act 2000*. 15
16
- (5) In this section— 17
- corrective services facility** see the *Corrective Services Act 2006*, schedule 4. 18
19
- corrective services officer** see the *Corrective Services Act 2006*, schedule 4. 20
21
- youth detention centre** means a detention centre established under the *Youth Justice Act 1992*, section 262. 22
23
- youth detention employee** means a detention centre employee under the *Youth Justice Act 1992*. 24
25

Division 2	Transport of persons within and to and from authorised mental health services and other particular places	1 2 3
358	Transport within authorised mental health service	4
	The administrator of an authorised mental health service, an authorised doctor, or another person approved by the administrator or authorised doctor, may transport an involuntary patient or classified patient (voluntary) from 1 place in the authorised mental health service to another place in the authorised mental health service.	5 6 7 8 9 10
	<i>Examples—</i>	11
	<ul style="list-style-type: none">• a patient may be transported to a different inpatient unit within the service• a patient may be transported to another place in the service for an examination or diagnostic test	12 13 14 15
359	Transport to or from authorised mental health service and other particular places	16 17
	An authorised person may transport an involuntary patient or classified patient (voluntary) to or from an authorised mental health service, public sector health service facility, place of custody, court or a place in the community for the purposes of this Act.	18 19 20 21 22
360	Taking person after treatment and care to person's requested place	23 24
	(1) This section applies if—	25
	(a) a person is transported from a place in the community to an authorised mental health service under an examination authority or recommendation for assessment; or	26 27 28 29
	(b) a person is transported from a place in the community to an authorised mental health service under an emergency	30 31

[s 361]

examination authority and a recommendation for
assessment is made for the person. 1
2

- (2) At the end of the person's detention in an authorised mental
health service, including under a recommendation for
assessment or treatment authority made for the person after
the examination or assessment of the person, the administrator
of the service must take reasonable steps to ensure the person
is returned to a place reasonably requested by the person. 3
4
5
6
7
8

Division 3 Transport of absent persons 9

361 Application of div 3 10

This division applies if— 11

- (a) a person absconds while being lawfully detained under
this Act or in a person's charge under section 620(2); or 12
13
- (b) a person subject to a treatment authority, forensic order
or treatment support order is being treated in the
community and the person does not attend at an
authorised mental health service or public sector health
service facility as required under the authority or order;
or 14
15
16
17
18
19
- (c) a treatment authority, forensic order, treatment support
order or judicial order is made for a person requiring the
person to be detained in an authorised mental health
service and the person is not in an authorised mental
health service when the authority or order is made; or 20
21
22
23
24
- (d) the category of a patient's treatment authority, forensic
order or treatment support order is changed to inpatient;
or 25
26
27
- (e) a forensic patient is receiving limited community
treatment and the chief psychiatrist orders the
suspension of the treatment under section 311(2)(a); or 28
29
30

[s 362]

-
- (f) the chief psychiatrist orders the category of a patient's forensic order to be changed to inpatient under section 311(2)(b); or
 - (g) a patient is temporarily absent from an authorised mental health service under section 221, or receiving limited community treatment, and either of the following applies—
 - (i) the patient does not return to the authorised mental health service at the end of the absence or treatment;
 - (ii) the approval of the absence, or authorisation of the treatment, is revoked; or
 - (h) a person does not attend at an authorised mental health service as directed under section 56 or 99; or
 - (i) a person subject to an examination order does not attend at an authorised mental health service or public sector health service facility as directed under the order; or
 - (j) a person does not attend at an examining practitioner as directed under section 719(4)(b).

362 Administrator or person in charge may require return of absent person

- (1) The administrator of an authorised mental health service, or person in charge of a public sector health service facility, may—
 - (a) authorise an authorised person, other than a police officer, to transport a person mentioned in section 361 to an authorised mental health service or public sector health service facility; or
 - (b) ask a police officer to transport a person mentioned in section 361 to an authorised mental health service or public sector health service facility.
- (2) The authorisation or request must—

[s 363]

- (a) be in the approved form; and 1
 - (b) state the name of the person to be transported; and 2
 - (c) state the name of the authorised mental health service or
public sector health service facility to which the person
is to be transported; and 3
4
5
 - (d) identify the risk the person presents to himself or
herself, the authorised person or police officer, and
others; and 6
7
8
 - (e) for a request to a police officer—state the reasons why
the administrator or person in charge considers it
necessary for a police officer to transport the person. 9
10
11
- (3) Before acting under this section, the administrator or person
in charge must make reasonable efforts to contact the person
and encourage the person to come or return to the authorised
mental health service or public sector health service facility. 12
13
14
15
- (4) Subsection (3) does not apply if the administrator or person in
charge considers there is a risk the person may harm himself
or herself or others if the administrator or person in charge
complies with the subsection. 16
17
18
19
- Note—* 20
- See also section 375 for applying for a warrant for the apprehension of a
person. 21
22

363 Limitation on requirement to return particular absent persons 23
24

- (1) This section applies if a person absconds while being lawfully
detained— 25
26
- (a) under a recommendation for assessment; or 27
 - (b) before the end of the assessment period for the person;
or 28
29
 - (c) under an examination authority; or 30
 - (d) under section 36. 31

(2)	An authorisation or request under section 362 to transport the person is in force for 3 days after the day the person absconds.	1 2
364	Authorised person may transport absent person	3
(1)	This section applies if an authorised person is authorised to transport a person under section 362(1).	4 5
(2)	The authorised person may transport the person named in the authorisation to the authorised mental health service or public sector health service facility stated in the authorisation.	6 7 8
(3)	If an authorised person mentioned in section 362(1)(a) intends to ask a police officer, under the <i>Police Powers and Responsibilities Act 2000</i> , section 16, to help transport the named person, the authorised person must ask the police officer in the approved form mentioned in section 362(2)(a).	9 10 11 12 13
	<i>Note—</i>	14
	Under section 357(4), an authorised person, other than a police officer, is a public official for the <i>Police Powers and Responsibilities Act 2000</i> .	15 16
	Under section 16 of that Act, a public official may ask a police officer to help the public official perform the public official’s functions.	17 18
(4)	The approved form must state the reasons why the authorised person considers it necessary to ask the police officer to help transport the person.	19 20 21
(5)	Before transporting the person, the authorised person must—	22
(a)	tell the person the authorised person is detaining the person and transporting the person to the authorised mental health service or public sector health service facility stated in the authorisation; and	23 24 25 26
(b)	explain to the person how taking action under paragraph (a) may affect the person.	27 28
365	Effect on assessment period	29
	If a person transported under an authorisation or request under section 362 was subject to a recommendation for assessment	30 31

[s 366]

- when the person absconded or the person absconded before 1
the end of the assessment period for the person— 2
- (a) despite section 41, the recommendation for assessment 3
continues in force; and 4
- (b) despite section 45, the assessment period for the person 5
starts when the person is admitted to the service or 6
facility to which the person is transported under section 7
364; and 8
- (c) a health service employee must note on the 9
recommendation for assessment when the assessment 10
period starts under paragraph (b). 11

Division 4 Transport of persons to and from 12 **interstate mental health services 13**

366 Apprehension of person absent from interstate mental 14 **health service 15**

- (1) An authorised person who is a police officer may apprehend, 16
in Queensland, a person— 17
- (a) who is absent without permission from an interstate 18
mental health service; and 19
- (b) for whom a warrant for the person’s apprehension has 20
been issued under a corresponding law of the State in 21
which the interstate mental health service is located (the 22
other State). 23
- (2) For subsection (1), a warrant issued under a corresponding 24
law authorising a person’s apprehension is taken to be a 25
warrant for apprehension of the person under this Act by a 26
police officer. 27
- (3) If the person is apprehended under this section, a police 28
officer may transport the person to an interstate mental health 29
service in the other State or an authorised mental health 30
service. 31

-
- (4) The person may be detained in an authorised mental health service for the period reasonably necessary to enable the administrator of the service to make arrangements for the person's return to an interstate mental health service. 1
2
3
4
- 367 Transport of person in Queensland to interstate mental health service** 5
6
- (1) This section applies to a person in Queensland who— 7
- (a) appears to have a mental illness and may be detained and transported to an authorised mental health service or public sector health service facility under the *Public Health Act 2005*, section 157B; or 8
9
10
11
- (b) is subject to a recommendation for assessment. 12
- (2) If permitted under a corresponding law, the person may be transported to an interstate mental health service by— 13
14
- (a) an authorised person; or 15
- (b) a person who, under a corresponding law, is authorised to transport the person to an interstate mental health service. 16
17
18
- 368 Transport of person outside Queensland to authorised mental health service** 19
20
- (1) This section applies to a person outside Queensland who, under a corresponding law, may be transported to an interstate mental health service for— 21
22
23
- (a) emergency involuntary examination or treatment and care relating to a mental illness; or 24
25
- (b) an involuntary assessment of whether the person should be involuntarily treated for a mental illness. 26
27
- (2) If subsection (1)(a) applies, the person may be transported to either of the following places for emergency examination or treatment and care— 28
29
30
- (a) an authorised mental health service; 31

[s 369]

- (b) a public sector health service facility. 1
- (3) If the public sector health service facility mentioned in 2
subsection (2)(b) is not an inpatient hospital, the person may 3
be transported to the facility only with the approval of the 4
person in charge of the facility. 5
- (4) If subsection (1)(b) applies, the person may be transported to 6
an authorised mental health service for an involuntary 7
assessment of whether the person should be involuntarily 8
treated for a mental illness. 9
- (5) The person may be transported to a place mentioned in 10
subsection (2) or (4) by— 11
- (a) an authorised person; or 12
- (b) a person who, under a corresponding law, is authorised 13
to transport the person to an interstate mental health 14
service. 15
- (6) A document under a corresponding law that recommends 16
assessment of a person to decide whether the person should be 17
involuntarily treated for a mental illness is taken to be a 18
recommendation for assessment for the purposes of this Act. 19
- (7) In this section— 20
- inpatient hospital* means a hospital at which a person may be 21
discharged on a day other than the day on which the person 22
was admitted to the hospital. 23
- 369 Making of emergency examination authority 24**
- (1) This section applies if a person mentioned in section 25
368(5)(b) (an *interstate officer*) transports a person to whom 26
section 368(1)(a) applies, to an authorised mental health 27
service or public sector health service facility. 28
- (2) The interstate officer must immediately give an authority for 29
the person. 30
- (3) The authority must— 31
- (a) be in the approved form; and 32

(b)	state the time when it is given.	1
(4)	The authority is taken to be an emergency examination authority given for the person under the <i>Public Health Act 2005</i> , section 157D.	2 3 4
Division 5	Transport powers	5
370	Application of div 5	6
	This division applies if an authorised person is required or permitted under this Act to transport a person for a stated purpose.	7 8 9
371	Power to detain	10
(1)	The power of the authorised person to transport the person includes the power to detain the person.	11 12
(2)	The authorised person may exercise the power to transport the person, including the power to detain the person, with the help, and using the force, that is necessary and reasonable in the circumstances.	13 14 15 16
372	Power to administer medication	17
(1)	Despite the absence or refusal of the person's consent, the power of the authorised person to transport the person includes the power to administer medication to the person.	18 19 20
(2)	However, the medication—	21
(a)	may be administered to the person only if a doctor is satisfied there is no other reasonably practicable way to protect the person or others from physical harm; and	22 23 24
(b)	must be administered by a doctor or by a registered nurse under the instruction of a doctor.	25 26

[s 373]

- (3) The doctor or registered nurse may administer the medication with the help, and using the force, that is necessary and reasonable in the circumstances. 1
2
3
- (4) For subsection (2)(b), the doctor’s instruction must include the medication’s name, the dose, and route and frequency of administration. 4
5
6
- (5) A doctor or registered nurse who administers medication under this section must keep a written record of the matters mentioned in subsection (4). 7
8
9
- (6) This section applies despite the *Guardianship and Administration Act 2000*, chapter 5, part 2, division 1. 10
11
- (7) This section does not apply to a classified patient (voluntary). 12
- (8) In this section— 13
- registered nurse** means a person registered under the Health Practitioner Regulation National Law— 14
15
- (a) to practise in the nursing and midwifery profession as a nurse, other than as a student; and 16
17
- (b) in the registered nurses division of that profession. 18
- 373 Power to use mechanical restraint** 19
- (1) The power of the authorised person to transport the person includes the power to use mechanical restraint on the person if the person is an involuntary patient. 20
21
22
- (2) However, the mechanical restraint may be used only if— 23
- (a) the chief psychiatrist has given approval, under subsection (3), for the authorised person to use mechanical restraint on the person; and 24
25
26
- (b) there is no other reasonably practicable way to protect the person or others from physical harm; and 27
28
- (c) the device used is an approved device; and 29
- (d) the use of mechanical restraint on the person, including applying the device to the person, is with no more force 30
31

than is necessary and reasonable in the circumstances;	1
and	2
(e) the person is observed continuously while restrained.	3
(3) The chief psychiatrist may give approval for an authorised person to use, under this section, mechanical restraint on the person if the chief psychiatrist is satisfied there is no other reasonably practicable way to protect the person or others from physical harm.	4 5 6 7 8
(4) The approval must state—	9
(a) the purpose for which mechanical restraint may be used on the person; and	10 11
(b) the period during which an authorised person may use mechanical restraint on the person; and	12 13
(c) the approved device that must be used; and	14
(d) any other conditions the chief psychiatrist considers appropriate.	15 16
(5) For subsection (4)(a), the purpose for which mechanical restraint may be used on the person includes examining, carrying out a diagnostic test on, or providing treatment and care to, the person.	17 18 19 20
374 Power to enter particular places	21
(1) The power of the authorised person to transport the person includes the power to enter a place in which the authorised person reasonably believes the person is if—	22 23 24
(a) an occupier of the place consents to the entry; or	25
(b) it is a public place and the entry is made when the place is open to the public.	26 27
(2) For asking an occupier of a place to consent to the entry, chapter 14, part 3, division 2 applies as if—	28 29
(a) a reference in the division to an inspector were a reference to the authorised person; and	30 31

[s 375]

- (b) a reference in the division to an inspector asking an occupier of a place to consent to an inspector entering the place under section 563(1)(a) were a reference to the authorised person asking the occupier of the place to consent to the authorised person entering the place under this section.

Note—

See also the *Police Powers and Responsibilities Act 2000*, section 21 for other powers of a police officer.

- (3) If the power to enter a place arises only because an occupier of the place consents to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.
- (4) If an authorised person lawfully enters a place under subsection (1) for the purpose of transporting a person, the power of the authorised person to transport the person also includes the power—
- (a) to search the place to find the person; and
 - (b) to remain in the place for as long as the authorised person considers it reasonably necessary to find the person.

Division 6 Warrant for apprehension of person to transport person

375 Application for warrant for apprehension of person

- (1) This section applies if an authorised person considers a warrant for apprehension of a person is necessary to enable an authorised person to transport the person under this Act to an authorised mental health service or public sector health service facility for examination, assessment, or treatment and care.
- (2) The authorised person may apply to a magistrate for a warrant for apprehension of the person.

-
- (3) The authorised person must prepare a written application stating the grounds on which the warrant is sought. 1
2
- (4) The written application must be sworn. 3
- (5) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires. 4
5
6
7
- Example—* 8
- The magistrate may require additional information supporting the application to be given by statutory declaration. 9
10

376 Issue of warrant 11

- (1) A magistrate may issue the warrant for apprehension of the person if the magistrate is satisfied the warrant is necessary to enable an authorised person to transport the person to an authorised mental health service or public sector health service facility for examination, assessment, or treatment and care. 12
13
14
15
16
17
- (2) The warrant authorises an authorised person— 18
- (a) to enter a place the authorised person reasonably believes the person is; and 19
20
- (b) to search the place to find the person; and 21
- (c) to remain in the place for as long as the authorised person considers it reasonably necessary to find the person; and 22
23
24
- (d) to transport the person to a stated authorised mental health service or public sector health service facility. 25
26

Note— 27

For a police officer's entry and search powers, see the *Police Powers and Responsibilities Act 2000*, section 21. Also, for the use of force by a police officer, see the *Police Powers and Responsibilities Act 2000*, section 615. 28
29
30
31

- (3) The warrant must state— 32

[s 377]

- (a) the person to whom the warrant applies; and 1
 - (b) that an authorised person may, with necessary and 2
reasonable help and force, exercise— 3
 - (i) the powers under the warrant mentioned in 4
subsection (2); and 5
 - (ii) the powers mentioned in division 5; and 6
 - (c) the hours of the day or night when a place mentioned in 7
subsection (2)(a) may be entered; and 8
 - (d) the magistrate’s name; and 9
 - (e) the day and time of the warrant’s issue; and 10
 - (f) the day, within 7 days after the warrant’s issue, the 11
warrant ends. 12
- (4) An authorised person may exercise a power under the warrant 13
with the help, and using the force, that is necessary and 14
reasonable in the circumstances. 15

377 Electronic application 16

- (1) An application under section 375 may be made by phone, fax, 17
email, radio, videoconferencing or another form of electronic 18
communication if the authorised person reasonably considers 19
it necessary because of— 20
- (a) urgent circumstances; or 21
 - (b) other special circumstances, including, for example, the 22
authorised person’s remote location. 23
- (2) The application— 24
- (a) may not be made before the authorised person prepares 25
the written application under section 375(3); but 26
 - (b) may be made before the written application is sworn. 27

378	Additional procedure if electronic application	1
(1)	For an application made under section 377, the magistrate may issue the warrant for apprehension of the person (the <i>original warrant</i>) only if the magistrate is satisfied—	2 3 4
(a)	it was necessary to make the application under section 377; and	5 6
(b)	the way the application was made under section 377 was appropriate.	7 8
(2)	After the magistrate issues the original warrant—	9
(a)	if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised person, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the authorised person; or	10 11 12 13 14
(b)	otherwise—	15
(i)	the magistrate must tell the authorised person the information mentioned in section 376(3); and	16 17
(ii)	the authorised person must complete a form of warrant, including by writing on it the information mentioned in section 376(3) told to the person by the magistrate.	18 19 20 21
(3)	The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the <i>duplicate warrant</i>), is a duplicate of, and as effectual as, the original warrant.	22 23 24 25
(4)	The authorised person must, at the first reasonable opportunity, send to the magistrate—	26 27
(a)	the written application complying with section 375(3) and (4); and	28 29
(b)	if the authorised person completed a form of warrant under subsection (2)(b), the completed form of warrant.	30 31
(5)	The magistrate must keep the original warrant and, on receiving the documents under subsection (4)—	32 33

[s 379]

- (a) attach the documents to the original warrant; and 1
- (b) give the original warrant and documents to the clerk of
the court of the relevant magistrates court. 2
3
- (6) Despite subsection (3), if— 4
- (a) an issue arises in a proceeding about whether an
exercise of a power was authorised by a warrant issued
under this section; and 5
6
7
- (b) the original warrant is not produced in evidence; 8
- the onus of proof is on the person relying on the lawfulness of
the exercise of the power to prove a warrant authorised the
exercise of the power. 9
10
11
- (7) In this section— 12
- relevant magistrates court*, in relation to a magistrate, means
the Magistrates Court that the magistrate constitutes under the
Magistrates Act 1991. 13
14
15
- 379 Defect in relation to a warrant** 16
- (1) A warrant for apprehension of a person is not invalidated by a
defect in— 17
18
- (a) the warrant; or 19
- (b) compliance with this division; 20
- unless the defect affects the substance of the warrant in a
material particular. 21
22
- (2) In this section— 23
- warrant for apprehension* includes a duplicate warrant under
section 378(3). 24
25
- 380 Warrants—entry procedure** 26
- (1) This section applies if an authorised person is intending to
enter a place under a warrant for apprehension of a person. 27
28

-
- (2) Before entering the place, the authorised person must do or make a reasonable attempt to do the following things—
- (a) identify himself or herself to a person present at the place who is an occupier of the place;
- Note—*
- See also the *Police Powers and Responsibilities Act 2000*, section 637.
- (b) give the person a copy of the warrant or, if the entry is authorised by a duplicate warrant under section 378(3), a copy of the duplicate warrant;
 - (c) tell the person the authorised person is permitted by the warrant to enter and search the place to find the person named in the warrant;
 - (d) give the person an opportunity to allow the authorised person immediate entry to the place without using force.
- (3) However, the authorised person need not comply with subsection (2) if the authorised person reasonably believes immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

Part 7 Security 20

Division 1 Preliminary 21

381 Purpose of pt 7 22

The purpose of this part is to provide for— 23

- (a) the delivery to, and sending of postal articles for, patients in authorised mental health services; and 25

[s 382]

- (b) searches of particular patients in authorised mental health services and particular public sector health service facilities; and 1
2
3
- (c) searches of persons on admission to, or entry into, high security units or other authorised mental health services approved by the chief psychiatrist; and 4
5
6
- (d) searches of visitors to high security units or other authorised mental health services approved by the chief psychiatrist; and 7
8
9
- (e) the power of administrators of authorised mental health services to exclude particular visitors to the service. 10
11

382 Definitions for pt 7 12

In this part— 13

authorised security officer means— 14

- (a) a security officer; or 15
- (b) an appropriately qualified health service employee of an authorised mental health service who is authorised by the administrator of the service to provide security services to the service. 16
17
18
19

general search, of a person, means a search— 20

- (a) to reveal the contents of the person’s outer garments, general clothes or hand luggage without touching the person or the luggage; or 21
22
23
- (b) in which the person may be required to— 24
 - (i) open his or her hands or mouth for visual inspection; or 25
26
 - (ii) shake his or her hair vigorously. 27

personal search, of a person, means a search in which light pressure is momentarily applied to the person over the person’s general clothes without direct contact being made with— 28
29
30
31

-
- (a) the person’s genital or anal areas; or 1
- (b) for a female—the person’s breasts. 2
- postal article* includes a postal article carried by a courier 3
service. 4
- scanning search*, of a person, means a search of the person by 5
electronic or other means that does not require the person to 6
remove the person’s general clothes or to be touched by 7
another person. 8
- Examples of a scanning search—* 9
- using a portable electronic apparatus or another portable apparatus 10
that can be passed over the person 11
 - using an electronic apparatus through which the person is required 12
to pass 13
- search requiring the removal of clothing*, of a person, means 14
a search in which the person removes all garments during the 15
course of the search, but in which direct contact is not made 16
with the person. 17
- security officer* means a person employed or engaged by an 18
authorised mental health service to provide security services, 19
regardless of how the person’s employment or engagement is 20
described. 21

Division 2 **Postal articles and other things in** 22
 authorised mental health services 23

- 383** **Patient may receive and send postal article** 24
- (1) A person must not prevent or impede in any way— 25
- (a) the delivery, to a patient of an authorised mental health 26
service, of a postal article addressed to the patient; or 27
- (b) the sending of a postal article for a patient of an 28
authorised mental health service. 29
- Maximum penalty—20 penalty units. 30

[s 384]

(2)	Subsection (1)(a) has effect subject to section 384.	1
(3)	A person does not commit an offence against subsection (1)(b) if the addressee of the postal article—	2 3
(a)	is the subject of a non-contact condition of a forensic order or treatment support order to which the patient is subject; or	4 5 6
(b)	has given written notice to the administrator of the service asking that postal articles addressed by the patient to the addressee be withheld.	7 8 9
(4)	In this section—	10
	<i>non-contact condition</i> , of a forensic order or treatment support order to which a patient is subject, means a condition of the order that requires the patient not to contact a stated person.	11 12 13 14
	<i>patient</i> means—	15
(a)	an involuntary patient; or	16
(b)	a person receiving treatment and care for a mental illness in an authorised mental health service, other than as an involuntary patient, including a person receiving treatment and care under an advance health directive or with the consent of a personal guardian or attorney.	17 18 19 20 21
384	Administrator may search thing received for patient	22
(1)	The administrator of an authorised mental health service, or an appropriately qualified person authorised by the administrator, may open or search anything received at the service for a patient.	23 24 25 26
(2)	However, the administrator may exercise a power under subsection (1) only if the patient is present or has been given the opportunity to be present.	27 28 29
(3)	Subsection (2) does not apply if the patient obstructs the administrator in the exercise of the administrator’s powers under subsection (1).	30 31 32

(4) In this section—	1
<i>patient</i> means—	2
(a) an involuntary patient; or	3
(b) a person receiving treatment and care for a mental illness in an authorised mental health service, other than as an involuntary patient, including a person receiving treatment and care under an advance health directive or with the consent of a personal guardian or attorney.	4 5 6 7 8
<i>search</i> includes search by—	9
(a) an electronic scanning device; and	10
(b) a physical examination.	11
Division 3	
Searches of patients of authorised mental health services or public sector health service facilities	12 13 14
385 Application of div 3	15
This division applies to—	16
(a) an involuntary patient of an authorised mental health service or public sector health service facility; or	17 18
(b) a classified patient (voluntary) of an authorised mental health service.	19 20
386 Power to search on belief of possession of harmful thing	21
(1) This section applies if a doctor or health practitioner believes the patient may have possession of a harmful thing.	22 23
(2) The doctor or health practitioner may—	24
(a) carry out a general search, scanning search or personal search of the patient; and	25 26

[s 387]

- (b) if the administrator of the authorised mental health service, or the person in charge of the public sector health service facility, gives approval for a search requiring the removal of clothing—carry out a search requiring the removal of clothing; and
- (c) carry out a search of the patient’s possessions.
- (3) The administrator of the service, or the person in charge of the facility, may give approval under subsection (2)(b) if the administrator or person in charge believes a search requiring the removal of clothing is necessary in the circumstances.
- (4) A search under this section may be carried out without the patient’s consent.
- (5) However, before carrying out a search under this section, the doctor or health practitioner must tell the patient the reasons for the search and how it is to be carried out.
- (6) A doctor or health practitioner may carry out a search under this section with the help, and using the force, that is necessary and reasonable in the circumstances.

Division 4 Searches of involuntary patients on admission to or entry into high security units or other approved services

387 Application of div 4

This division applies to person who is admitted as an involuntary patient to, or enters as an involuntary patient in, an authorised mental health service that is—

- (a) a high security unit; or
- (b) another authorised mental health service, or part of an authorised mental health service, approved by the chief psychiatrist for the purpose of this division.

388	Power to search on admission or entry	1
(1)	On the patient's admission to, or entry into, the service, an authorised security officer may, for detecting harmful things—	2 3 4
(a)	carry out a general search, scanning search or personal search of the patient; and	5 6
(b)	if the administrator of the service gives approval for a search requiring the removal of clothing—carry out a search requiring the removal of clothing; and	7 8 9
(c)	carry out a search of the patient's possessions.	10
(2)	The administrator of the service may give approval under subsection (1)(b) if the administrator believes a search requiring the removal of clothing is necessary in the circumstances.	11 12 13 14
(3)	A search under this section may be carried out without the patient's consent.	15 16
(4)	However, before carrying out a search under this section, the authorised security officer must tell the patient the reasons for the search and how it is to be carried out.	17 18 19
(5)	An authorised security officer may carry out a search under this section with the help, and using the force, that is necessary and reasonable in the circumstances.	20 21 22

Division 5	Searches of visitors to high security units or other approved services	23 24
-------------------	---	----------

389	Application of div 5	25
	This division applies to a visitor to an authorised mental health service that is—	26 27
(a)	a high security unit; or	28

[s 390]

(b)	another authorised mental health service, or part of an authorised mental health service, approved by the chief psychiatrist for the purpose of this division.	1 2 3
390	Power to search visitor	4
	An authorised security officer for the service may ask the visitor—	5 6
(a)	to submit to a general search, scanning search or personal search by the authorised security officer; or	7 8
(b)	to submit the visitor’s possessions to a search.	9
391	Requirement to explain to visitor	10
	The authorised security officer must tell the visitor in general terms of—	11 12
(a)	the officer’s powers in relation to the search; and	13
(b)	how the search is to be carried out; and	14
(c)	the visitor’s rights under this division.	15
392	Direction to leave	16
(1)	If the visitor does not agree to a request under section 390, the authorised security officer may refuse the visitor permission to enter the service or, if the person is in the service, direct the person to immediately leave the service.	17 18 19 20
(2)	If the visitor is directed to leave the service, the visitor must comply with the direction.	21 22
	Maximum penalty—20 penalty units.	23
393	Visitor may leave thing with authorised security officer	24
	If the visitor does not want the authorised security officer to search anything in the visitor’s possession, the visitor may	25 26

leave the thing with the officer until the visitor leaves the service.	1 2
394 Authorised security officer may ask visitor to leave thing with officer	3 4
(1) The authorised security officer may ask the visitor to leave a thing the officer believes is a harmful thing with the officer until the visitor leaves the service.	5 6 7
(2) If the visitor refuses to comply with a request under subsection (1), the officer may refuse the visitor permission to enter the service or, if the person is in the service, direct the person to immediately leave the service.	8 9 10 11
(3) If the visitor is directed to leave the service, the visitor must comply with the direction.	12 13
Maximum penalty—20 penalty units.	14
395 Visitor may ask for search to stop	15
(1) The authorised security officer must stop the search if the visitor tells the officer the visitor does not want the search to continue and is prepared to leave the service immediately.	16 17 18
(2) The visitor must leave the service immediately.	19
Maximum penalty—20 penalty units.	20
396 Return of thing to visitor	21
If the visitor has left a thing with an authorised security officer, the officer must ensure the thing is returned to the visitor if—	22 23 24
(a) the visitor asks for its return; and	25
(b) the officer is satisfied the visitor is about to leave the service.	26 27

[s 397]

Division 6	Requirements for searches	1
397	Requirements for personal search	2
(1)	A person authorised under division 3, 4 or 5 to carry out a personal search (the <i>searcher</i>) may do any 1 or more of the following in relation to the person being searched—	3 4 5
(a)	remove and inspect an outer garment or footwear of the person;	6 7
(b)	remove and inspect all things from the pockets of the person’s clothing;	8 9
(c)	touch the clothing worn by the person to the extent necessary to detect things in the person’s possession;	10 11
(d)	remove and inspect any detected thing.	12
(2)	The searcher may exercise a power under subsection (1)(c) only if—	13 14
(a)	the searcher is the same gender as the person; and	15
(b)	the search is carried out in a part of a building that ensures the person’s privacy.	16 17
(3)	The searcher must—	18
(a)	carry out the search in a way that respects the person’s dignity to the greatest possible extent; and	19 20
(b)	cause as little inconvenience to the person as is practicable in the circumstances.	21 22
398	Requirements for search requiring removal of clothing	23
(1)	A search under division 3 or 4 requiring the removal of clothing of a person must be carried out by at least 2 persons authorised to carry out the search, but by no more persons than are reasonably necessary to carry out the search.	24 25 26 27
(2)	Each person carrying out the search (each a <i>searcher</i>) must be of the same gender as the person being searched.	28 29

-
- (3) Before carrying out the search, 1 of the searchers must tell the person—
- (a) that the person will be required to remove the person’s clothing during the search; and
 - (b) why it is necessary to remove the clothing.
- (4) The searcher must—
- (a) ensure the search is carried out in a part of a building that ensures the person’s privacy; and
 - (b) ensure, to the extent practicable, that the way in which the person is searched causes minimal embarrassment to the person; and
 - (c) take reasonable care to protect the person’s dignity; and
 - (d) carry out the search as quickly as practicable; and
 - (e) allow the person to dress as soon as the search is finished.
- (5) The searcher must, if reasonably practicable, give the person the opportunity to remain partly clothed during the search, including, for example, by allowing the person to dress the person’s upper body before being required to remove clothing from the lower part of the body.
- (6) If the searcher seizes clothing because of the search, the searcher must ensure the person is left with, or given, reasonably appropriate clothing.

399 Requirements for search of possessions

- (1) A person authorised under division 3, 4 or 5 to carry out a search of a person’s possessions (the *searcher*) may—
- (a) open or inspect a thing in the person’s possession; and
 - (b) remove and inspect any detected thing.
- (2) However, the searcher may exercise a power to inspect a thing under subsection (1) only if the person is present or has been given the opportunity to be present.

[s 400]

- (3) Subsection (2) does not apply if the person obstructs the searcher in the exercise of the searcher's powers. 1
2

Division 7 Records of searches 3

400 Record of search must be made 4

- (1) This section applies if— 5
- (a) a search requiring the removal of clothing is carried out under division 3 or 4; or 6
7
 - (b) a person seizes anything found during a search under this part. 8
9
- (2) As soon as practicable after carrying out the search, the person who carried out the search must make a written record of the following details of the search— 10
11
12
- (a) the reasons for the search; 13
 - (b) the names of the persons present during the search; 14
 - (c) how the search was carried out; 15
 - (d) details of anything seized, including the reasons for seizing. 16
17

Division 8 Seizure 18

401 Seizure of harmful or other thing 19

- (1) A person authorised under this part to carry out a search (the *searcher*) may seize anything found during the search that the searcher reasonably suspects is— 20
21
22
- (a) connected with, or is evidence of, the commission or intended commission of an offence against an Act; or 23
24
 - (b) for a search under division 2, 3 or 4—a harmful thing. 25

-
- (2) If the searcher believes a seized thing is connected with, or is evidence of, the commission or intended commission of an offence against an Act, the searcher must give it to an authorised inspector for the Act. 1
2
3
4
- (3) The seizure provisions of the Act mentioned in subsection (2) apply to the thing as if the searcher had seized it under the provisions of the Act that relate to the offence. 5
6
7
- (4) If the authorised inspector is not reasonably satisfied the thing is evidence of the commission or intended commission of an offence against the Act, the authorised inspector must return it to the searcher who must deal with it under this section. 8
9
10
11
- (5) If the searcher believes a thing seized from a patient, or a thing returned under subsection (4), is a harmful thing, the searcher must— 12
13
14
- (a) keep it for the patient and give it to the patient on the patient’s discharge from the authorised mental health service or public sector health service facility; or 15
16
17
- (b) give it to someone else if the patient is able to give, and has given, agreement to do so; or 18
19
- (c) if the searcher is satisfied someone else is entitled to possession of the thing—give or send it to the person; or 20
21
- (d) if the searcher is satisfied it is of negligible value—dispose of it in the way the administrator of the authorised mental health service, or the person in charge of the public sector health service facility, believes appropriate. 22
23
24
25
26
- (6) A thing seized from a visitor, and returned to the searcher under subsection (4), is forfeited to the State if the searcher— 27
28
- (a) can not find the visitor from whom it was seized, after making reasonable inquiries; or 29
30
- (b) can not return it to the visitor, after making reasonable efforts. 31
32
- (7) In applying subsection (6)— 33
-

[s 402]

(a)	subsection (6)(a) does not require the searcher to make inquiries if it would be unreasonable in the particular circumstances to make inquiries to find the visitor; and	1 2 3
(b)	subsection (6)(b) does not require the searcher to make efforts if it would be unreasonable in the particular circumstances to make efforts to return the thing to the visitor.	4 5 6 7
(8)	Regard must be had to a thing's nature, condition and value in deciding—	8 9
(a)	whether it is reasonable to make inquiries or efforts; and	10
(b)	if making inquiries or efforts—what inquiries or efforts, including the period over which they are made, are reasonable.	11 12 13
(9)	In this section—	14
	<i>authorised inspector</i> , for an Act, means a person who is authorised under the Act to perform inspection and enforcement functions.	15 16 17
	<i>seizure provisions</i> , of an Act, means the provisions of the Act relating to the access to, and retention, disposal and forfeiture of, a thing after its seizure under the Act.	18 19 20
402	Receipt for seized thing	21
(1)	A person authorised under this part to carry out a search must give a receipt for a thing seized to the person from whom it was seized.	22 23 24
(2)	The receipt must describe generally the thing seized and its condition.	25 26
403	Access to seized thing	27
(1)	This section applies to a thing seized on a search under this part.	28 29

-
- (2) Until the thing is forfeited or returned under this division, the searcher must allow its owner to inspect it and, if it is a document, to copy it. 1
2
3
- (3) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying. 4
5

Division 9 Identity cards 6

404 Approval of identity card 7

- (1) The administrator of an authorised mental health service that is a high security unit or approved service must approve an identity card for each authorised security officer for the service. 8
9
10
11
- (2) An approved identity card for an authorised security officer must— 12
13
- (a) contain a recent photograph of the officer; and 14
- (b) identify the person as an authorised security officer. 15
- (3) In this section— 16
- approved service* means an authorised mental health service, or part of an authorised mental health service, approved by the chief psychiatrist under section 387(b) for the purpose of division 4, or under section 389(b) for the purpose of division 5. 17
18
19
20
21

Division 10 Compensation 22

405 Compensation for damage to possessions 23

- (1) A patient or visitor (the *claimant*) may claim from the State the cost of repairing or replacing the claimant's possessions damaged in the exercise or purported exercise of a power under this part. 24
25
26
27

[s 406]

- (2) The cost may be claimed and ordered in a proceeding—
 - (a) brought in a court of competent jurisdiction; or
 - (b) for an offence against this Act brought against the claimant.
- (3) A court may order an amount be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

Division 11 Exclusion of visitors 11

406 Administrator may refuse to allow person to visit patient 12

- (1) The administrator of an authorised mental health service may refuse to allow a person to visit a patient of the service if the administrator is satisfied the proposed visit will adversely affect the patient’s treatment and care.
 - Example for subsection (1)—*
 - The administrator may be satisfied a patient’s treatment and care will be adversely affected if, on a previous visit by a person, the patient’s mental state deteriorated.
- (2) The administrator must give the person written notice of the decision.
- (3) The notice must state—
 - (a) the reasons for the decision; and
 - (b) that the person may appeal to the tribunal against the decision within 28 days after the person receives the notice; and
 - (c) how the appeal is made.
- (4) This section does not permit the administrator to refuse to allow either of the following to visit a patient of the service—

(a)	a person performing a function under an Act, including, for example, a community visitor performing a function under the <i>Public Guardian Act 2014</i> ;	1 2 3
(b)	a legal representative or health practitioner requested by the patient to visit.	4 5
Chapter 12	Mental Health Review Tribunal proceedings	6 7
Part 1	Preliminary	8
407	Purpose of ch 12	9
	The purpose of this chapter is to provide for the tribunal—	10
(a)	to review the following—	11
(i)	treatment authorities;	12
(ii)	forensic orders;	13
(iii)	treatment support orders;	14
(iv)	the fitness for trial of particular persons;	15
(v)	the detention of minors in high security units; and	16
(b)	to hear applications for the following—	17
(i)	examination authorities;	18
(ii)	approvals of regulated treatment;	19
(iii)	approvals of transfers of particular persons into and out of Queensland.	20 21

[s 408]

408	Particular decisions of no effect for classified patient	1
(1)	This section applies if the tribunal does any of the following on a review of a treatment authority, forensic order or treatment support order for a person who is a classified patient—	2 3 4 5
(a)	changes the category of the authority or order to community;	6 7
(b)	orders limited community treatment for the person;	8
(c)	approves limited community treatment for the person.	9
(2)	The change, order or approval is of no effect while the person is a classified patient.	10 11

Part 2 **Review of treatment authorities** 12

Division 1 **Preliminary** 13

409	Definitions for pt 2	14
	In this part—	15
	<i>applicant review</i> , of a treatment authority, see section 411(2).	16
	<i>periodic review</i> , of a treatment authority, see section 411(1).	17
	<i>review</i> , of a treatment authority, means any of the following—	18
(a)	a periodic review of the authority;	19
(b)	an applicant review of the authority;	20
(c)	a tribunal review of the authority.	21
	<i>tribunal review</i> , of a treatment authority, see section 411(3) and (4).	22 23

410	Matters to which tribunal must have regard	1
(1)	In making a decision under this part in relation to a review of a treatment authority, the tribunal must have regard to the relevant circumstances of the person subject to the authority.	2 3 4
	<i>Examples of decisions in relation to a review of a treatment authority—</i>	5
	• deciding whether to confirm or revoke the authority	6
	• deciding whether to confirm or change the category of the authority	7
	• deciding whether the person is to receive any treatment in the community	8 9
	• deciding whether to change or remove a condition to which the authority is subject or to impose a condition on the authority	10 11
(2)	Subsection (1) does not limit any other provision of this part that requires the tribunal to have regard to a stated matter.	12 13

Division 2	When particular reviews are conducted	14 15
-------------------	--	----------

411	When reviews are conducted	16
(1)	The tribunal must review (a <i>periodic review</i>) a treatment authority—	17 18
(a)	within 28 days after the authority is made; and	19
(b)	within 6 months after the review under paragraph (a) is completed; and	20 21
(c)	within 6 months after the review under paragraph (b) is completed; and	22 23
(d)	at intervals of not more than 12 months after the review under paragraph (c) is completed.	24 25
(2)	Also, the tribunal must review (an <i>applicant review</i>) a treatment authority on application by—	26 27
(a)	the person subject to the authority; or	28

[s 412]

- (b) an interested person for the person mentioned in paragraph (a); or
- (c) the chief psychiatrist.
- (3) Further, the tribunal may at any time, on its own initiative, review (a *tribunal review*) a treatment authority.
- (4) If the tribunal receives written notice under section 210(3) of the amendment of a treatment authority, the tribunal must review (also a *tribunal review*) the authority within 14 days after receiving the notice.
- (5) This section is subject to sections 412 to 414 and chapter 16, part 2, division 6, subdivision 2.

412 When periodic review deferred

- (1) This section applies if—
 - (a) an applicant review or a tribunal review (each a *previous review*) of a treatment authority has been completed—
 - (i) within 6 months before a periodic review (the *next scheduled review*) of the treatment authority must be conducted under section 411(1)(b) or (c); or
 - (ii) within 12 months before a periodic review (also the *next scheduled review*) of the treatment authority must be conducted under section 411(1)(d); and
 - (b) the tribunal is satisfied there are no matters relevant to the next scheduled review that were not considered by the tribunal on the previous review.
- (2) Section 411(1) is taken to require the next scheduled review of the treatment authority to be conducted—
 - (a) if the next scheduled review is to be conducted under section 411(1)(b) or (c)—within 6 months after the previous review was completed; or

(b)	if the next scheduled review is to be conducted under section 411(1)(d)—within 12 months after the previous review was completed.	1 2 3
413	When tribunal must not conduct review	4
	The tribunal must not conduct a review of a treatment authority if—	5 6
(a)	an appeal to the Mental Health Court against the tribunal’s decision on a review of the authority is pending; and	7 8 9
(b)	the court has stayed the tribunal’s decision on the review of the authority.	10 11
414	When particular tribunal review is not required	12
(1)	This section applies to a tribunal review of a treatment authority mentioned in section 411(4), if the tribunal receives written notice under section 210(5) of the amendment of the authority.	13 14 15 16
(2)	The tribunal is not required to conduct, or complete the hearing of, the review.	17 18
Division 3	Applications and notices of hearings	19 20
415	Application for applicant review to state orders sought	21
(1)	An application for an applicant review of a treatment authority must state the orders sought by the applicant.	22 23
(2)	An order sought must be an order mentioned in division 4.	24

[s 416]

416	Notice of hearing	1
(1)	The tribunal must give each of the following persons written notice of the hearing of a review of a treatment authority—	2 3
(a)	the person subject to the authority;	4
(b)	for an applicant review, if the person is not the applicant—the applicant;	5 6
(c)	the administrator of the authorised mental health service responsible for the person;	7 8
(d)	if the person is a classified patient—the chief psychiatrist.	9 10
(2)	The notice must be given at least 7 days before the hearing.	11
(3)	If the review is a tribunal review, the notice must state—	12
(a)	for a tribunal review mentioned in section 411(4)—that the tribunal proposes to consider whether to confirm the category of the treatment authority as inpatient; or	13 14 15
(b)	for another tribunal review—any particular matter the tribunal proposes to consider on the review.	16 17

Division 4	Decisions and orders	18
-------------------	-----------------------------	----

Subdivision 1	Decisions to be made on review	19
----------------------	---------------------------------------	----

417	Decisions	20
------------	------------------	----

- | | | |
|-----|---|----------|
| (1) | On a periodic review of a treatment authority, the tribunal must decide to— | 21
22 |
| (a) | confirm the authority; or | 23 |
| (b) | revoke the authority. | 24 |

Note— 25

See subdivision 2 for the orders the tribunal may make if it confirms the authority. 26
27

(2)	On an applicant review of a treatment authority, the tribunal—	1
(a)	must decide whether to make the orders sought by the applicant; and	2 3
(b)	may make the orders under this division it considers appropriate.	4 5
(3)	On a tribunal review of a treatment authority, the tribunal—	6
(a)	must decide any particular matter stated in the notice given under section 416(3); and	7 8
(b)	may make the orders under this division it considers appropriate.	9 10
418	Administrator to provide report	11
	For a periodic review of a treatment authority under section 411(1)(c), if the person subject to the authority does not have a personal guardian—	12 13 14
(a)	the administrator of the person’s treating health service must give the tribunal a report about whether the appointment of a personal guardian for the person may result in there being a less restrictive way for the person to receive treatment and care for the person’s mental illness; and	15 16 17 18 19 20
(b)	the tribunal must consider whether the appointment of a personal guardian for the person may result in there being a less restrictive way for the person to receive treatment and care for the person’s mental illness.	21 22 23 24
419	Requirement to revoke treatment authority	25
(1)	On a review of a treatment authority, the tribunal must revoke the authority if the tribunal considers—	26 27
(a)	the treatment criteria no longer apply to the person subject to the authority; or	28 29

[s 420]

(b)	there is a less restrictive way for the person to receive treatment and care for the person’s mental illness.	1 2
(2)	However, subsection (1) does not apply if the tribunal considers the person’s capacity to consent to be treated for the person’s mental illness is not stable.	3 4 5
	<i>Example of when a person’s capacity to consent is not stable—</i>	6
	the person gains and loses capacity to consent to be treated during a short time period	7 8
Subdivision 2	Confirmation of treatment authority—related orders	9 10
420	Application of sdiv 2	11
	This subdivision applies if, on a review of a treatment authority, the tribunal confirms the authority.	12 13
421	Change of category to community	14
	If the category of the treatment authority is inpatient, the tribunal must change the category of the authority to community unless the tribunal considers that 1 or more of the following can not reasonably be met if the category of the authority is community—	15 16 17 18 19
	(a) the person’s treatment and care needs;	20
	(b) the safety and welfare of the person;	21
	(c) the safety of others.	22
422	Community category—deciding whether authorised doctor may reduce treatment in community	23 24
(1)	This section applies if—	25
	(a) the category of the treatment authority is community; or	26

-
- (b) the tribunal changes the category of the treatment authority to community under section 421. 1
2
- (2) The tribunal must decide whether an authorised doctor may, at a future time, reduce the extent of treatment in the community received by the person. 3
4
5
- 423 Inpatient category—limited community treatment** 6
- (1) This section applies if the category of the treatment authority is inpatient. 7
8
- (2) The tribunal may approve limited community treatment, or an extension of limited community treatment, for the person. 9
10
- (3) In deciding whether to approve or extend limited community treatment under subsection (2), the tribunal must have regard to the purpose of limited community treatment. 11
12
13
- (4) If the tribunal approves or extends limited community treatment under subsection (2), the tribunal must decide whether an authorised doctor may, at a future time, reduce the extent of treatment in the community received by the person. 14
15
16
17
- 424 Conditions** 18
- (1) The tribunal may— 19
- (a) change or remove a condition to which the treatment authority is subject; or 20
21
- (b) impose a condition on the treatment authority. 22
- (2) However, the tribunal may not impose a condition on the treatment authority that requires the person to take a particular medication or a particular dosage of a medication. 23
24
25
- 425 Transfer to another authorised mental health service** 26
- (1) The tribunal may order the person’s transfer to another authorised mental health service to provide treatment and care for the person. 27
28
29

[s 426]

- (2) In deciding whether to order the person's transfer under subsection (1), the tribunal must have regard to the following—
- (a) the person's mental state and psychiatric history;
 - (b) the person's treatment and care needs;
 - (c) the capacity of the authorised mental health service to which the person is to be transferred;
 - (d) whether the transfer would be in the best interests of the person, including, for example, closer proximity to the person's family, carers and other support persons.

426 Change of category to inpatient

- (1) This section applies if the category of the treatment authority is community.
- (2) The tribunal may change the category of the treatment authority to inpatient, but only if the tribunal considers it is reasonably necessary for an authorised doctor to examine the person in order to review the person's treatment and care needs.

Note—

Under section 209, the authorised doctor who examines the person may change the nature or extent of the person's treatment in the community.

- (3) If the tribunal changes the category of the treatment authority under this section to inpatient, the tribunal may authorise an authorised person to transport the person to an inpatient unit of a stated authorised mental health service.
- (4) For subsection (3), an authorised person may transport the person to an inpatient unit of the stated authorised mental health service.

Note—

For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.

427	Other orders	1
	Subject to the other provisions of this subdivision, the tribunal may provide for any other matter the tribunal considers appropriate.	2 3 4
Part 3	Review of forensic orders (mental health) and forensic orders (disability)	5 6 7
Division 1	Preliminary	8
428	Application of pt 3	9
	This part applies to a forensic order (mental health) or forensic order (disability).	10 11
429	Definitions for pt 3	12
	In this part—	13
	<i>applicant review</i> , of a forensic order (mental health) or forensic order (disability), see section 431(2).	14 15
	<i>periodic review</i> , of a forensic order (mental health) or forensic order (disability), see section 431(1).	16 17
	<i>review</i> , of a forensic order (mental health) or forensic order (disability), means—	18 19
	(a) an applicant review of the order; or	20
	(b) a periodic review of the order; or	21
	(c) a tribunal review of the order.	22
	<i>tribunal review</i> , of a forensic order (mental health) or forensic order (disability), see section 431(3) and (4).	23 24

[s 430]

430	Matters to which tribunal must have regard	1
(1)	In making a decision under this part in relation to a review of a forensic order (mental health) or forensic order (disability), the tribunal must have regard to the following—	2 3 4
(a)	the relevant circumstances of the person subject to the order;	5 6
(b)	the nature of the relevant unlawful act and the period of time that has passed since the act happened;	7 8
(c)	any victim impact statement given to the tribunal under section 155 or 740 relating to the relevant unlawful act;	9 10
(d)	if the Mental Health Court made a recommendation in the order about an intervention program for the person—the person’s willingness to participate in the program if offered to the person.	11 12 13 14
	<i>Examples of decisions in relation to a review of a forensic order—</i>	15
	• deciding whether to confirm or revoke the order	16
	• deciding whether to confirm or change the category of the order	17
	• deciding whether the person is to receive any treatment in the community	18 19
	• deciding whether to change or remove a condition to which the order is subject or to impose a condition on the order	20 21
(2)	Subsection (1) does not limit any other provision of this part that requires the tribunal to have regard to a stated matter.	22 23

Division 2	When particular reviews are conducted	24 25
-------------------	--	----------

431	When reviews are conducted	26
------------	-----------------------------------	----

(1)	The tribunal must review (a <i>periodic review</i>) the forensic order—	27 28
(a)	within 6 months after the order is made; and	29

-
- (b) at intervals of not more than 6 months after the review under paragraph (a) is completed. 1
2
- (2) Also, the tribunal must review (an *applicant review*) the forensic order on application by— 3
4
- (a) the person subject to the order; or 5
- (b) an interested person for the person mentioned in paragraph (a); or 6
7
- (c) the Attorney-General; or 8
- (d) if an authorised mental health service is responsible for the person—the chief psychiatrist; or 9
10
- (e) if the forensic disability service is responsible for the person—the director of forensic disability. 11
12
- (3) Further, the tribunal may at any time, on its own initiative, review (a *tribunal review*) the forensic order. 13
14
- (4) If the tribunal receives written notice under section 213(3) of the amendment of the forensic order, the tribunal must review (also a *tribunal review*) the order within 21 days after receiving the notice. 15
16
17
18
- (5) This section is subject to sections 432 to 435 and chapter 16, part 2, division 6, subdivision 2. 19
20
- 432 When periodic review deferred** 21
- (1) This section applies if— 22
- (a) an applicant review or a tribunal review (each a *previous review*) of the forensic order has been completed within 23
24
25
26
27
6 months before a periodic review (the *next scheduled review*) of the order must be conducted under section 431(1)(a) or (b); and
- (b) the tribunal is satisfied there are no matters relevant to the next scheduled review that were not considered by the tribunal on the previous review. 28
29
30

[s 433]

- (2) Section 431(1) is taken to require the next scheduled review of the forensic order to be conducted within 6 months after the previous review was completed. 1
2
3
- 433 Requirement to conduct periodic review suspended 4**
- (1) This section applies if the person who is subject to the forensic order is transferred to an interstate mental health service under part 10, division 2. 5
6
7
- (2) While the interstate mental health service is responsible for the person, the tribunal is not required to conduct a periodic review of the forensic order under section 431(1). 8
9
10
- 434 When tribunal must not conduct review 11**
- The tribunal must not conduct a review of the forensic order if— 12
13
- (a) an appeal to the Mental Health Court against the tribunal’s decision on a review of the order is pending; 14
15
and 16
- (b) the court has stayed the tribunal’s decision on the review of the order. 17
18
- 435 When particular tribunal review is not required 19**
- (1) This section applies to a tribunal review of the forensic order mentioned in section 431(4), if the tribunal receives written notice under section 213(5) of the amendment of the order. 20
21
22
- (2) The tribunal is not required to conduct, or complete the hearing of, the review. 23
24

Division 3	Applications and notices of hearings	1 2
436	Application for applicant review to state orders sought	3
(1)	An application for an applicant review of the forensic order must state the orders sought by the applicant.	4 5
(2)	An order sought must be an order mentioned in division 4 or 6.	6 7
(3)	However, during any non-revocation period for the forensic order, the application may seek an order revoking the forensic order only if the revocation is sought under section 455.	8 9 10
437	Notice of hearing	11
(1)	The tribunal must give each of the following persons written notice of the hearing of a review of the forensic order—	12 13
(a)	the person subject to the order;	14
(b)	for an applicant review, if the person is not the applicant—the applicant;	15 16
(c)	if an authorised mental health service is responsible for the person—	17 18
(i)	the administrator of the service; and	19
(ii)	the chief psychiatrist;	20
(d)	if the forensic disability service is responsible for the person—	21 22
(i)	the administrator of the service; and	23
(ii)	the director of forensic disability;	24
(e)	the Attorney-General.	25
(2)	The notice must be given at least 14 days before the hearing.	26
(3)	If the review is a tribunal review, the notice must state—	27

[s 438]

(a)	for a tribunal review mentioned in section 431(4)—that the tribunal proposes to consider whether to confirm the category of the forensic order as inpatient; or	1 2 3
(b)	for another tribunal review—any particular matter the tribunal proposes to consider on the review.	4 5
Division 4	Decisions and orders	6
Subdivision 1	Decisions to be made on review	7
438	Application of div 4	8
	This division is subject to division 5.	9
439	Decisions	10
(1)	On a periodic review of the forensic order, the tribunal must decide to—	11 12
(a)	confirm the order; or	13
(b)	revoke the order.	14
	<i>Notes—</i>	15
1	See subdivision 2 for the orders the tribunal may make if it confirms the order.	16 17
2	See subdivision 3 for the orders the tribunal may make if the order is a forensic order (mental health) and the tribunal revokes the order.	18 19 20
(2)	On an applicant review of the forensic order, the tribunal—	21
(a)	must decide whether to make the orders sought by the applicant; and	22 23
(b)	may make the orders under this division it considers appropriate.	24 25
	<i>Example for paragraph (b)—</i>	26

If an applicant seeks an order changing the category of the forensic order from inpatient to community, the tribunal may decide not to change the category of the order, but may order that the person have limited community treatment of a stated extent. 1
2
3
4

- (3) On a tribunal review of the forensic order, the tribunal— 5
- (a) must decide any particular matter stated in the notice given under section 437(3); and 6
7
 - (b) may make the orders under this division it considers appropriate. 8
9

440 Requirement to confirm forensic order 10

(1) The tribunal must confirm the forensic order if the tribunal considers the order is necessary, because of the person's mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property. 11
12
13
14
15

(2) Also, during any non-revocation period for the forensic order, the tribunal is taken, for section 441, to have confirmed the order. 16
17
18

Note— 19

The tribunal must not revoke the forensic order during the non-revocation period for the order. See section 450. 20
21

(3) Subsection (2) does not apply if the forensic order is a forensic order (mental health) and the tribunal decides to revoke the order under section 455. 22
23
24

**Subdivision 2 Confirmation of forensic order—related orders 25
26**

441 Application of sdiv 2 27

This subdivision applies if, on a review of the forensic order, the tribunal confirms the order. 28
29

[s 442]

442	Change or confirmation of category	1
(1)	The tribunal may change the category of the forensic order.	2
(2)	However, the tribunal may change the category of the forensic order to community, or confirm the category of the order as community, only if the tribunal is satisfied there is not an unacceptable risk to the safety of the community, because of the person’s mental condition, including the risk of serious harm to other persons or property.	3 4 5 6 7 8
(3)	This section is subject to section 443.	9
443	Inpatient category—orders about treatment in community	10
(1)	This section applies if the tribunal—	11
(a)	confirms the category of the forensic order as inpatient; or	12 13
(b)	changes the category of the forensic order to inpatient.	14
(2)	The tribunal must do 1 of the following—	15
(a)	order that the person have no limited community treatment;	16 17
	<i>Note—</i>	18
	An order made under paragraph (a) may not be amended by an authorised doctor. See section 212(2).	19 20
(b)	approve that an authorised doctor under section 212 or a senior practitioner under the Forensic Disability Act, section 20 may, at a future time—	21 22 23
(i)	authorise limited community treatment for the person, to the extent and subject to the conditions decided by the tribunal; or	24 25 26
(ii)	change the category of the order to community, subject to the conditions decided by the tribunal;	27 28
(c)	order that the person have limited community treatment—	29 30
(i)	of a stated extent; and	31

-
- (ii) subject to the conditions decided by the tribunal, including whether, or the extent to which, an authorised doctor under section 212 or a senior practitioner under the Forensic Disability Act, section 20 may amend the forensic order in relation to treatment in the community. 1
2
3
4
5
6
- (3) The tribunal may make an order under subsection (2)(b) or (c) only if the tribunal is satisfied there is not an unacceptable risk to the safety of the community, because of the person’s mental condition, including the risk of serious harm to other persons or property. 7
8
9
10
11
- (4) In deciding whether the tribunal is satisfied of the matters mentioned in subsection (3), the tribunal must have regard to— 12
13
14
- (a) the purpose of limited community treatment; and 15
- (b) the fact that— 16
- (i) if an authorised mental health service is responsible for the person—an authorised doctor may increase the extent of treatment in the community for the person only if satisfied of the matters mentioned in section 212(3); or 17
18
19
20
21
- (ii) if the forensic disability service is responsible for the person—a senior practitioner under the Forensic Disability Act may authorise treatment in the community for the person only if satisfied of the matters mentioned in the Forensic Disability Act, section 20(2). 22
23
24
25
26
27
- 444 Community category—orders about treatment in community** 28
29
- (1) This section applies if the tribunal— 30
- (a) confirms the category of the forensic order as community; or 31
32

[s 445]

(b)	changes the category of the forensic order to community.	1 2
(2)	The tribunal must—	3
(a)	order that an authorised doctor or a senior practitioner under the Forensic Disability Act must not change the category of the order to inpatient; or	4 5 6
(b)	approve that an authorised doctor under section 212 or a senior practitioner under the Forensic Disability Act, section 20 may, at a future time, change the nature or extent of treatment in the community received by the person, to the extent and subject to the conditions decided by the tribunal.	7 8 9 10 11 12
	<i>Example of a change of extent of treatment in the community—</i>	13
	changing the category of the forensic order from community to inpatient, with or without limited community treatment	14 15
445	Conditions	16
(1)	The tribunal may—	17
(a)	change or remove a condition to which the forensic order is subject; or	18 19
(b)	impose a condition on the forensic order.	20
(2)	Without limiting subsection (1), the tribunal may impose a condition that the person must not contact a stated person, including, for example, a victim of the relevant unlawful act.	21 22 23
(3)	However, the tribunal may not impose a condition on the forensic order that requires the person to take a particular medication or a particular dosage of a medication.	24 25 26
446	Other orders	27
	Subject to the other provisions of this subdivision, the tribunal may provide for any other matter the tribunal considers appropriate.	28 29 30

Subdivision 3	Revocation of forensic order (mental health)—related orders	1 2
447	Application of sdiv 3	3
	This subdivision applies if—	4
	(a) the forensic order is a forensic order (mental health); and	5 6
	(b) the tribunal decides to revoke the forensic order.	7
448	Making of treatment support order	8
(1)	The tribunal must decide to make a treatment support order for the person if the tribunal considers a treatment support order, but not a forensic order, is necessary, because of the person’s mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property.	9 10 11 12 13 14
(2)	For making a treatment support order under subsection (1), sections 144 and 145 apply as if—	15 16
	(a) a reference in the sections to the Mental Health Court were a reference to the tribunal; and	17 18
	(b) a reference in the sections to the person the subject of the reference were a reference to the person subject to the forensic order.	19 20 21
449	Making of treatment authority or no further order	22
(1)	If the tribunal considers that neither a forensic order nor a treatment support order is necessary, because of the person’s mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property, the tribunal may—	23 24 25 26 27
	(a) make no further order for the person; or	28
	(b) make a treatment authority for the person.	29

[s 449]

- (2) The tribunal may make a treatment authority for the person under subsection (1)(b) only on the recommendation of an authorised psychiatrist who considers, after examining the person, that—
- (a) the treatment criteria apply to the person; and
 - (b) there is no less restrictive way for the person to receive treatment and care for the person’s mental illness.
- (3) The treatment authority must state the following—
- (a) the category of the authority;
 - (b) the authorised mental health service responsible for the person;
 - (c) the nature and extent of any limited community treatment the person is to receive;
 - (d) any conditions the tribunal considers necessary for the person’s treatment and care, other than a condition requiring the person to take a particular medication or a particular dosage of a medication.
- (4) The tribunal may decide the category of the treatment authority is inpatient only if the tribunal is satisfied that 1 or more of the following can not reasonably be met if the category of the authority is community—
- (a) the person’s treatment and care needs;
 - (b) the safety and welfare of the person;
 - (c) the safety of others.
- (5) However, if the person is a classified patient, the tribunal must decide the category of the authority is inpatient.
- (6) In deciding the nature and extent of any limited community treatment under subsection (3)(c), the tribunal must have regard to the purpose of limited community treatment.
- (7) If the tribunal decides the category of the treatment authority is community, the tribunal must decide whether an authorised

doctor may, at a future time, reduce the extent of treatment in the community received by the person.	1 2
(8) The treatment authority is taken to be a treatment authority made under section 49 by the authorised psychiatrist mentioned in subsection (2).	3 4 5
(9) Sections 53 and 59 apply to the treatment authority as if a reference in the sections to the authorised doctor were a reference to the authorised psychiatrist mentioned in subsection (2).	6 7 8 9
(10) As soon as practicable after the treatment authority is made, the authorised psychiatrist mentioned in subsection (2) must decide the nature and extent of the treatment and care to be provided to the person under the authority.	10 11 12 13
Division 5	
Restrictions on revoking or amending forensic orders	14 15
450 Orders with non-revocation period	16
(1) The tribunal must not revoke a forensic order under division 4 during any non-revocation period for the order.	17 18
(2) Subsection (1) is subject to section 455.	19
451 Order for person temporarily unfit for trial	20
(1) This section applies to a person subject to a forensic order if—	21
(a) a finding of unfitness has been made in relation to the person; and	22 23
(b) the proceeding against the person in relation to which the finding of unfitness was made has not been discontinued under section 488 or 489.	24 25 26
(2) The tribunal must not revoke the forensic order unless a treatment support order is made for the person under section 448.	27 28 29

[s 452]

<i>Note—</i>	1
If, on a review under part 6, the tribunal decides the person is fit for trial, the forensic order ends on the person’s appearance at the mention of the proceeding for the relevant offence. See section 495(2).	2 3 4
452 Order for person charged with prescribed offence	5
(1) This section applies if a forensic order for a person was made on a reference in relation to a prescribed offence allegedly committed by the person.	6 7 8
(2) The tribunal must not revoke the forensic order unless—	9
(a) the person has been examined, under an order made under section 719, by an examining practitioner; and	10 11
(b) the tribunal has obtained and considered the examining practitioner’s written report on the examination.	12 13
(3) This section is subject to section 450.	14
453 Tribunal’s order takes effect after suspension or change of category ends	15 16
(1) This section applies if—	17
(a) the chief psychiatrist has, under section 311, suspended limited community treatment for the person or changed the category of the forensic order for the person to inpatient; and	18 19 20 21
<i>Note—</i>	22
Under section 311, the suspension of limited community treatment or change of category of the forensic order is for a period of not more than 7 days. The person may appeal to the tribunal against the chief psychiatrist’s decision. See section 531.	23 24 25 26 27
(b) the suspension, or the change of category, is in effect when the tribunal—	28 29
(i) orders or approves limited community treatment for the person; or	30 31

-
- (ii) orders that the category of the forensic order be changed to community. 1
2
 - (2) The tribunal's order or approval takes effect when the suspension, or change of category, ends. 3
4

Division 6 Other provisions 5

454 Transfer of responsibility for forensic patient 6

- (1) On a review of a forensic order, the tribunal may order that responsibility for the person subject to the order be transferred to— 7
8
9
 - (a) if an authorised mental health service is responsible for the person—another authorised mental health service; or 10
11
 - (b) if an authorised mental health service is responsible for the person and the person is subject to a forensic order (disability)—another authorised mental health service or the forensic disability service; or 12
13
14
15
 - (c) if the forensic disability service is responsible for the person—an authorised mental health service. 16
17
- (2) In deciding whether to make an order under subsection (1), the tribunal must have regard to each of the following— 18
19
 - (a) the person's mental state and psychiatric history; 20
 - (b) any intellectual disability of the person; 21
 - (c) the person's treatment and care needs; 22
 - (d) the security requirements for the person; 23
 - (e) if responsibility for the person is to be transferred to an authorised mental health service—the capacity of the authorised mental health service to which the person is to be transferred; 24
25
26
27
 - (f) whether the transfer would be in the best interests of the person, including, for example, closer proximity to the person's family, carers and other support persons. 28
29
30

[s 455]

- (3) However, the tribunal may order under subsection (1) that responsibility for the person be transferred to the forensic disability service only if the chief executive (forensic disability) certifies, in writing, that the forensic disability service has—
- (a) the physical capacity to accommodate the person; and
 - (b) the capacity to provide care for the person under the order.
- (4) For subsection (3), section 148 applies as if—
- (a) a reference in the section to the Mental Health Court were a reference to the tribunal; and
 - (b) a reference in the section to section 147 were a reference to subsection (1).

455 Person with dual disability

- (1) This section applies to a person who—
- (a) has a dual disability; and
 - (b) is subject to a forensic order (mental health).
- (2) If the tribunal is satisfied the person no longer requires involuntary treatment and care for the person’s mental illness, the tribunal must—
- (a) revoke the forensic order (mental health); and
 - (b) make a forensic order (disability) for the person.
- (3) For making the forensic order (disability), section 135 and chapter 5, part 4, division 2, subdivision 2 apply as if—
- (a) a reference in the provisions to the Mental Health Court were a reference to the tribunal; and
 - (b) a reference in the provisions to the person the subject of the reference were a reference to the person subject to the forensic order (mental health).

(4)	If there was a non-revocation period for the forensic order (mental health), the forensic order (disability) is taken to have the same non-revocation period.	1 2 3
(5)	For subsection (4), the forensic order (disability) is taken to have been made when the forensic order (mental health) was made.	4 5 6
(6)	The revocation of the forensic order (mental health) under this section does not affect any recommendation made by the court under section 136.	7 8 9
Part 4	Review of forensic orders (Criminal Code)	10 11
456	Application of pt 4 This part applies to a forensic order (Criminal Code).	12 13
457	Tribunal to conduct hearing The tribunal must, within 21 days after the tribunal is notified of the making of the forensic order (Criminal Code) for a person, conduct a hearing for the purpose of making a forensic order (mental health) or forensic order (disability) for the person.	14 15 16 17 18 19
458	Notice of hearing (1) The tribunal must give the following persons written notice of the hearing— (a) the person; (b) the Attorney-General; (c) the chief psychiatrist;	20 21 22 23 24 25

[s 459]

(d)	the director of forensic disability;	1
(e)	the administrator of the authorised mental health service to which the person has been admitted under the forensic order (Criminal Code).	2 3 4
(2)	The notice must be given at least 14 days before the hearing.	5
459	Making of forensic order	6
(1)	The tribunal must make a forensic order (mental health) for the person unless subsection (2) applies.	7 8
(2)	The tribunal must make a forensic order (disability) for the person if the tribunal considers—	9 10
(a)	the person has an intellectual disability but does not have a dual disability; or	11 12
(b)	the person has a dual disability but does not require involuntary treatment and care for the person’s mental illness.	13 14 15
(3)	On the making of the forensic order under subsection (1) or (2), the forensic order (Criminal Code) ends.	16 17
460	Application of ch 5 provisions	18
	For making a forensic order (mental health) or forensic order (disability) under section 459, section 135 and chapter 5, part 4, division 2, subdivision 2 apply as if—	19 20 21
(a)	a reference in the provisions to the Mental Health Court were a reference to the tribunal; and	22 23
(b)	a reference in the provisions to the person the subject of the reference were a reference to the person subject to the forensic order (Criminal Code).	24 25 26

Part 5	Review of treatment support orders	1
		2
Division 1	Preliminary	3
461	Definitions for pt 5	4
	In this part—	5
	<i>applicant review</i> , of a treatment support order, see section 463(2).	6
		7
	<i>periodic review</i> , of a treatment support order, see section 463(1).	8
		9
	<i>review</i> , of a treatment support order, means any of the following—	10
		11
	(a) a periodic review of the order;	12
	(b) an applicant review of the order;	13
	(c) a tribunal review of the order.	14
	<i>tribunal review</i> , of a treatment support order, see section 463(3) and (4).	15
		16
462	Matters to which tribunal must have regard	17
(1)	In making a decision under this part in relation to a review of a treatment support order, the tribunal must have regard to the following—	18
		19
		20
	(a) the relevant circumstances of the person subject to the order;	21
		22
	(b) the nature of the relevant unlawful act and the period of time that has passed since the act happened;	23
		24
	(c) any victim impact statement given to the tribunal under section 155 or 740 relating to the relevant unlawful act;	25
		26

[s 463]

- (d) if the order was made because a forensic order (mental health) for the person was revoked and the Mental Health Court made a recommendation in the forensic order about an intervention program for the person—the person’s willingness to participate in the program if offered to the person. 1
2
3
4
5
6
- Note—* 7
- See section 448 for when the tribunal, on deciding to revoke a forensic order (mental health) for a person, may make a treatment support order for the person. 8
9
10
- Examples of decisions in relation to a review of a treatment support order—* 11
12
- deciding whether to confirm or revoke the order 13
 - deciding whether to confirm or change the category of the order 14
 - deciding whether the person is to receive any treatment in the community 15
16
 - deciding whether to change or remove a condition to which the order is subject or to impose a condition on the order 17
18
- (2) Subsection (1) does not limit any other provision of this part that requires the tribunal to have regard to a stated matter. 19
20

Division 2 When particular reviews are conducted 21 22

463 When reviews are conducted 23

- (1) The tribunal must review (a *periodic review*) a treatment support order— 24
25
- (a) within 6 months after the order is made; and 26
 - (b) at intervals of not more than 6 months after the review under paragraph (a) is completed. 27
28
- (2) Also, the tribunal must review (an *applicant review*) a treatment support order on application by— 29
30
- (a) the person subject to the order; or 31

-
- (b) an interested person for the person mentioned in paragraph (a); or
- (c) the chief psychiatrist.
- (3) Further, the tribunal may at any time, on its own initiative, review (a *tribunal review*) a treatment support order.
- (4) If the tribunal receives written notice under section 217(3) of the amendment of a treatment support order, the tribunal must review (also a *tribunal review*) the order within 14 days after receiving the notice.
- (5) This section is subject to sections 464 to 467 and chapter 16, part 2, division 6, subdivision 2.
- 464 When periodic review deferred**
- (1) This section applies if—
- (a) an applicant review or a tribunal review (each a *previous review*) of a treatment support order has been completed within 6 months before a periodic review (the *next scheduled review*) of the order must be conducted under section 463(1)(a) or (b); and
- (b) the tribunal is satisfied there are no matters relevant to the next scheduled review that were not considered by the tribunal on the previous review.
- (2) Section 463(1) is taken to require the next scheduled review of the treatment support order to be conducted within 6 months after the previous review was completed.
- 465 Requirement to conduct periodic review suspended**
- (1) This section applies if a person who is subject to a treatment support order is transferred to an interstate mental health service under part 10, division 2.
- (2) While the interstate mental health service is responsible for the person, the tribunal is not required to conduct a periodic review of the treatment support order under section 463(1).

[s 466]

466	When tribunal must not conduct review	1
	The tribunal must not conduct a review of a treatment support order if—	2 3
	(a) an appeal to the Mental Health Court against the tribunal’s decision on a review of the order is pending; and	4 5 6
	(b) the court has stayed the tribunal’s decision on the review of the order.	7 8
467	When particular tribunal review is not required	9
	(1) This section applies to a tribunal review of a treatment support order mentioned in section 463(4), if the tribunal receives written notice under section 217(5) of the amendment of the order.	10 11 12 13
	(2) The tribunal is not required to conduct, or complete the hearing of, the review.	14 15
Division 3	Applications and notices of hearings	16 17
468	Application for applicant review to state orders sought	18
	(1) An application for an applicant review of a treatment support order must state the orders sought by the applicant.	19 20
	(2) An order sought must be an order mentioned in division 4.	21
469	Notice of hearing	22
	(1) The tribunal must give each of the following persons written notice of the hearing of a review of a treatment support order—	23 24 25
	(a) the person subject to the order;	26

-
- (b) for an applicant review, if the person is not the applicant—the applicant; 1
2
 - (c) the administrator of the authorised mental health service responsible for the person; 3
4
 - (d) the chief psychiatrist. 5
 - (2) The notice must be given at least 7 days before the hearing. 6
 - (3) If the review is a tribunal review, the notice must state— 7
 - (a) for a tribunal review mentioned in section 463(4)—that the tribunal proposes to consider whether to confirm the category of the treatment support order as inpatient; or 8
9
10
 - (b) for another tribunal review—any particular matter the tribunal proposes to consider on the review. 11
12

Division 4 Decisions and orders 13

Subdivision 1 Decisions to be made on review 14

470 Decisions 15

- (1) On a periodic review of a treatment support order, the tribunal must decide to— 16
17
 - (a) confirm the order; or 18
 - (b) revoke the order. 19
- Notes—* 20
 - 1 See subdivision 2 for the orders the tribunal may make if it confirms the order. 21
22
 - 2 See subdivision 3 for the orders the tribunal may make if it revokes the order. 23
24
- (2) On an applicant review of a treatment support order, the tribunal— 25
26

[s 471]

(a)	must decide whether to make the orders sought by the applicant; and	1 2
(b)	may make the orders under this division it considers appropriate.	3 4
(3)	On a tribunal review of a treatment support order, the tribunal—	5 6
(a)	must decide any particular matter stated in the notice given under section 469(3); and	7 8
(b)	may make the orders under this division it considers appropriate.	9 10
471	Requirement to confirm treatment support order	11
(1)	On a review of a treatment support order, the tribunal must confirm the order if the tribunal considers the order is necessary, because of the person’s mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property.	12 13 14 15 16
(2)	Also, the tribunal must confirm the treatment support order if—	17 18
(a)	a finding of unfitness has been made in relation to the person; and	19 20
(b)	the person has not been found fit for trial on a review of the person’s fitness for trial under chapter 12, part 6; and	21 22
(c)	the proceeding for the relevant offence has not been discontinued under section 488 or 489.	23 24
Subdivision 2	Confirmation of treatment support order—related orders	25 26
472	Application of sdiv 2	27
	This subdivision applies if, on a review of a treatment support order, the tribunal confirms the order.	28 29

473	Change of category to community	1
	If the category of the treatment support order is inpatient, the tribunal must change the category of the order to community unless the tribunal considers that 1 or more of the following can not reasonably be met if the category of the order is community—	2 3 4 5 6
	(a) the person’s treatment and care needs;	7
	(b) the safety and welfare of the person;	8
	(c) the safety of others.	9
474	Community category—deciding whether authorised doctor may reduce treatment in community	10 11
	(1) This section applies if—	12
	(a) the category of the treatment support order is community; or	13 14
	(b) the tribunal changes the category of the treatment support order to community under section 473.	15 16
	(2) The tribunal must decide whether an authorised doctor may, at a future time, reduce the extent of treatment in the community received by the person.	17 18 19
475	Inpatient category—limited community treatment	20
	(1) This section applies if the category of the treatment support order is inpatient.	21 22
	(2) The tribunal may approve limited community treatment, or an extension of limited community treatment, for the person.	23 24
	(3) In deciding whether to approve or extend limited community treatment under subsection (2), the tribunal must have regard to the purpose of limited community treatment.	25 26 27
	(4) If the tribunal approves or extends limited community treatment under subsection (2), the tribunal must decide	28 29

[s 476]

	whether an authorised doctor may, at a future time, reduce the extent of treatment in the community received by the person.	1 2
476	Conditions	3
(1)	The tribunal may—	4
(a)	change or remove a condition to which the treatment support order is subject; or	5 6
(b)	impose a condition on the treatment support order.	7
(2)	Without limiting subsection (1), the tribunal may impose a condition that the person must not contact a stated person, including, for example, a victim of the relevant unlawful act.	8 9 10
(3)	However, the tribunal may not impose a condition on the treatment support order that requires the person to take a particular medication or a particular dosage of a medication.	11 12 13
477	Transfer to another authorised mental health service	14
(1)	The tribunal may order the person’s transfer to another authorised mental health service to provide treatment and care for the person.	15 16 17
(2)	In deciding whether to order the person’s transfer under subsection (1), the tribunal must have regard to the following—	18 19 20
(a)	the person’s mental state and psychiatric history;	21
(b)	the person’s treatment and care needs;	22
(c)	the security requirements for the person;	23
(d)	the capacity of the authorised mental health service to which the person is to be transferred;	24 25
(e)	whether the transfer would be in the best interests of the person, including, for example, closer proximity to the person’s family, carers and other support persons.	26 27 28

478	Change of category to inpatient	1
(1)	This section applies if the category of the treatment support order is community.	2 3
(2)	The tribunal may change the category of the order to inpatient, but only if the tribunal considers it is reasonably necessary for an authorised doctor to examine the person in order to review the person’s treatment and care needs.	4 5 6 7
	<i>Note—</i>	8
	Under section 216, the authorised doctor who examines the person may change the nature or extent of the person’s treatment in the community.	9 10
(3)	If the tribunal changes the category of the treatment support order under this section to inpatient, the tribunal may authorise an authorised person to transport the person to an inpatient unit of a stated authorised mental health service.	11 12 13 14
(4)	For subsection (3), an authorised person may transport the person to an inpatient unit of the stated authorised mental health service.	15 16 17
	<i>Note—</i>	18
	For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.	19 20
479	Other orders	21
	Subject to the other provisions of this subdivision, the tribunal may provide for any other matter the tribunal considers appropriate.	22 23 24
Subdivision 3	Revocation of treatment support order—related orders	25 26
480	Application of sdiv 3	27
	This subdivision applies if the tribunal decides to revoke the treatment support order.	28 29

[s 481]

481	Making of treatment authority or no further order	1
(1)	The tribunal may—	2
(a)	make no further order for the person; or	3
(b)	make a treatment authority for the person.	4
(2)	The tribunal may make a treatment authority for the person under subsection (1)(b) only on the recommendation of an authorised psychiatrist who considers, after examining the person, that—	5 6 7 8
(a)	the treatment criteria apply to the person; and	9
(b)	there is no less restrictive way for the person to receive treatment and care for the person’s mental illness.	10 11
(3)	The treatment authority must state the following—	12
(a)	the category of the authority;	13
(b)	the authorised mental health service responsible for the person;	14 15
(c)	the nature and extent of any limited community treatment the person is to receive;	16 17
(d)	any conditions the tribunal considers necessary for the person’s treatment and care, other than a condition requiring the person to take a particular medication or a particular dosage of a medication.	18 19 20 21
(4)	The tribunal may decide the category of the treatment authority is inpatient only if the tribunal is satisfied that 1 or more of the following can not reasonably be met if the category of the authority is community—	22 23 24 25
(a)	the person’s treatment and care needs;	26
(b)	the safety and welfare of the person;	27
(c)	the safety of others.	28
(5)	In deciding the nature and extent of any limited community treatment under subsection (3)(c), the tribunal must have regard to the purpose of limited community treatment.	29 30 31

(6)	If the tribunal decides the category of the treatment authority is community, the tribunal must decide whether an authorised doctor may, at a future time, reduce the extent of treatment in the community received by the person.	1 2 3 4
(7)	The treatment authority is taken to be a treatment authority made under section 49 by the authorised psychiatrist mentioned in subsection (2).	5 6 7
(8)	Sections 53 and 59 apply to the treatment authority as if a reference in the sections to the authorised doctor were a reference to the authorised psychiatrist mentioned in subsection (2).	8 9 10 11
(9)	As soon as practicable after the treatment authority is made, the authorised psychiatrist mentioned in subsection (2) must decide the nature and extent of the treatment and care to be provided to the person under the authority.	12 13 14 15
Part 6	Review of fitness for trial	16
Division 1	Review	17
482	Application of div 1	18
	This division applies to a person charged with an offence if—	19
(a)	a finding of unfitness has been made in relation to the person; and	20 21
(b)	the person has not been found fit for trial; and	22
(c)	the proceeding against the person for the offence has not been discontinued under this Act or otherwise.	23 24

[s 483]

- 483 Meaning of *finding of unfitness*** 1
- For this division, a *finding of unfitness* is made in relation to 2
a person if— 3
- (a) on a reference in relation to the person, the Mental 4
Health Court decides under section 118 the person is 5
unfit for trial and the unfitness for trial is not permanent; 6
or 7
- Note—* 8
- Under section 132, the Mental Health Court must make a 9
forensic order (mental health), forensic order (disability) or 10
treatment support order for the person. 11
- (b) on the trial of the person for an indictable offence, a jury 12
makes a section 613 finding or section 645 finding in 13
relation to the person. 14
- 484 When reviews are conducted** 15
- (1) The tribunal must review the person’s fitness for trial— 16
- (a) for the period of 1 year starting on the day the finding of 17
unfitness is made—at intervals of not more than 3 18
months; and 19
- (b) after the period mentioned in paragraph (a) has 20
ended—at intervals of not more than 6 months after the 21
last review under paragraph (a) is completed. 22
- (2) Also, the tribunal must review the person’s fitness for trial on 23
application by— 24
- (a) the person; or 25
- (b) an interested person for the person mentioned in 26
paragraph (a); or 27
- (c) the chief psychiatrist; or 28
- (d) the director of forensic disability. 29
- (3) Further, the tribunal may at any time, on its own initiative, 30
review the person’s fitness for trial. 31

-
- 485 Notice of hearing** 1
- (1) The tribunal must give each of the following persons written 2
notice of the hearing of a review of the person's fitness for 3
trial— 4
- (a) the person; 5
 - (b) for a review under section 484(2), if the person is not the 6
applicant—the applicant; 7
 - (c) if an authorised mental health service is responsible for 8
the person— 9
 - (i) the administrator of the service; and 10
 - (ii) the chief psychiatrist; 11
 - (d) if the forensic disability service is responsible for the 12
person— 13
 - (i) the administrator of the service; and 14
 - (ii) the director of forensic disability; 15
 - (e) the Attorney-General. 16
- (2) The notice must be given at least 7 days before the hearing. 17
- 486 Decisions on review** 18
- (1) On the hearing of the review, the tribunal must consider the 19
person's mental state and decide whether the person is fit for 20
trial. 21
- (2) If, on the last review conducted under section 484(1)(a), or on 22
a review conducted under section 484(1)(b), the tribunal 23
decides the person is unfit for trial, the tribunal must also 24
decide whether the person is likely to be fit for trial in a 25
reasonable time. 26

[s 487]

Division 2	Procedures following review if person unfit for trial	1 2
487	Application of div 2	3
	This division applies if, on a review under division 1 of the fitness for trial of a person charged with an offence (the <i>relevant offence</i>), the tribunal decides the person is unfit for trial.	4 5 6 7
488	Director of public prosecutions to decide whether proceeding to be discontinued	8 9
	The director of public prosecutions must—	10
	(a) within 28 days after receiving written notice of the tribunal’s decision, decide whether to discontinue the proceeding against the person for the relevant offence; and	11 12 13 14
	<i>Note—</i>	15
	The tribunal must give the director of public prosecutions written notice of the tribunal’s decision. See section 753(3).	16 17
	(b) within 7 days after making the decision under paragraph (a), give the tribunal written notice of the decision.	18 19
489	Proceeding discontinued at end of prescribed period	20
	(1) The proceeding against the person for the relevant offence is discontinued at the end of the prescribed period if—	21 22
	(a) the director of public prosecutions has not decided under section 488 to discontinue the proceeding; or	23 24
	(b) the tribunal has not decided the person is fit for trial.	25
	(2) For subsection (1), the <i>prescribed period</i> is—	26
	(a) for a proceeding for an offence for which the person is liable to life imprisonment—7 years from the day the finding of unfitness was made; or	27 28 29

[s 490]

-
- (b) for a proceeding for another offence—3 years from the day the finding of unfitness was made. 1
2
- (3) In calculating the prescribed period, the following periods must be disregarded— 3
4
- (a) a period for which the person is a patient required to return; 5
6
- (b) a period for which the Forensic Disability Act, section 113 applies to the person. 7
8
- 490 Effect of discontinuing proceeding 9**
- (1) This section applies if the proceeding against the person for the relevant offence is discontinued— 10
11
- (a) by the director of public prosecutions under section 488; 12
or 13
- (b) under section 489. 14
- (2) The director of public prosecutions must, within 7 days after the proceeding is discontinued, give each of the following persons written notice of the discontinuance of the proceeding— 15
16
17
18
- (a) the person; 19
- (b) the registrar of the court in which the proceeding for the relevant offence was being conducted; 20
21
- (c) if the director of public prosecutions was not the prosecuting authority for the relevant offence—the prosecuting authority for the relevant offence; 22
23
24
- (d) the tribunal; 25
- (e) if an authorised mental health service is responsible for the person—the chief psychiatrist; 26
27
- (f) if the forensic disability service is responsible for the person—the director of forensic disability; 28
29
- (g) the Attorney-General. 30

[s 491]

(3)	The person can not be prosecuted again for the relevant offence.	1 2
(4)	Despite the discontinuance of the proceeding, the forensic order or treatment support order to which the person is subject continues in force.	3 4 5
	<i>Note—</i>	6
	If the proceeding against the person for the offence is discontinued other than under section 488 or 489, the order to which the person is subject ends. See section 154.	7 8 9
491	Proceeding may be discontinued at other time	10
	Nothing in this division prevents the proceeding against the person for the relevant offence being discontinued at any time, other than under section 488 or 489.	11 12 13
Division 3	Procedures following review if person fit for trial	14 15
492	Application of div 3	16
	This division applies if, on a review under division 1 of the fitness for trial of a person charged with an offence (the <i>relevant offence</i>), the tribunal decides the person is fit for trial.	17 18 19 20
493	Definitions for div 3	21
	In this division—	22
	<i>relevant court</i> means the court in which the proceeding for the relevant offence has been brought.	23 24
	<i>relevant offence</i> see section 492.	25

494	Director of public prosecutions to give notice of fitness for trial	1 2
	The director of public prosecutions must, within 7 days after receiving written notice of the tribunal’s decision, give written notice of the tribunal’s decision to—	3 4 5
	(a) the registrar of the relevant court; and	6
	(b) if the director of public prosecutions is not the prosecuting authority for the relevant offence—the prosecuting authority for the relevant offence.	7 8 9
	<i>Note—</i>	10
	The tribunal must give the director of public prosecutions written notice of the tribunal’s decision. See section 753(3).	11 12
495	Listing proceeding for mention	13
(1)	The registrar of the relevant court must arrange for the proceeding for the relevant offence to be listed for mention—	14 15
	(a) within 7 days after being notified of the tribunal’s decision; or	16 17
	(b) if the court can not be constituted within the period mentioned in paragraph (a)—at the earliest opportunity after the end of that period.	18 19 20
(2)	On the person’s appearance at the mention of the proceeding, the forensic order or treatment support order to which the person is subject ends.	21 22 23
(3)	An authorised person may transport the person from the authorised mental health service in which the person is being detained to the relevant court for the person’s appearance at the mention of the proceeding.	24 25 26 27
	<i>Note—</i>	28
	For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.	29 30
(4)	However, subsection (3) does not prevent the person appearing at the mention of the proceeding by remote	31 32

[s 496]

- conferencing while remaining at the authorised mental health service. 1
2
- (5) The person may be detained at the authorised mental health service until— 3
4
- (a) the person leaves the service to appear at the mention of the proceeding; or 5
6
- (b) if the person appears at the mention of the proceeding by remote conferencing while remaining at the service—the person is taken into custody. 7
8
9
- (6) In this section— 10
mention includes review. 11

Part 7 **Review of detention of minors in high security units** 12 13

496 Application of pt 7 14

This part applies if the chief psychiatrist approves— 15

- (a) under section 70, that the administrator of a high security unit may give consent for a minor to be transported to the high security unit for assessment, treatment and care; or 16
17
18
19
- (b) under section 349, the transfer of responsibility for a minor to a high security unit. 20
21

Note— 22

The administrator of the high security unit must give the tribunal written notice of the minor's admission, or transfer, to the high security unit. 23
24
See sections 77 and 356. 25

497	When reviews are conducted	1
(1)	The tribunal must review the minor's detention in the high security unit—	2 3
(a)	within 7 days after the tribunal is notified of the chief psychiatrist's approval; and	4 5
(b)	at intervals of not more than 3 months after the review under paragraph (a) is completed.	6 7
(2)	Also, the tribunal must review the minor's detention in the high security unit on application by—	8 9
(a)	the minor; or	10
(b)	an interested person for the minor.	11
(3)	Further, the tribunal may at any time, on its own initiative, review the minor's detention in the high security unit.	12 13
498	Notice of hearing	14
(1)	The tribunal must give each of the following persons written notice of the hearing of a review of the minor's detention in the high security unit—	15 16 17
(a)	the minor;	18
(b)	for a review under section 497(2), if the minor is not the applicant—the applicant;	19 20
(c)	the administrator of the high security unit;	21
(d)	the chief psychiatrist.	22
	<i>Note—</i>	23
	See section 285(5) for when the notice may be given to the minor's parent as well as, or instead of, the minor.	24 25
(2)	The notice must be given at least 7 days before the hearing.	26
(3)	However, subsection (2) does not apply for the first review of the minor's detention.	27 28

[s 499]

499	Decision on review	1
(1)	On a review of the minor's detention in the high security unit, the tribunal must decide whether—	2 3
(a)	the minor should continue to be detained in the high security unit; or	4 5
(b)	responsibility for the minor should be transferred from the high security unit to an authorised mental health service that is not a high security unit.	6 7 8
(2)	In deciding the review, the tribunal must have regard to the following—	9 10
(a)	the minor's mental state and psychiatric history;	11
(b)	the minor's treatment and care needs;	12
(c)	the minor's security requirements.	13

Part 8	Applications for examination authorities	14 15
---------------	---	----------

500	Application for examination authority	16
(1)	The following persons may apply to the tribunal for an authority (an <i>examination authority</i>) for another person—	17 18
(a)	the administrator of an authorised mental health service;	19
(b)	a person authorised in writing by the administrator of an authorised mental health service to make an application under this section;	20 21 22
(c)	a person who has received advice, from a doctor or authorised mental health practitioner, about the clinical matters for the person who is the subject of the application.	23 24 25 26

Note—

See section 32 for the powers of a doctor or authorised mental health practitioner under an examination authority.

- (2) The approved form for the application must include a statement by a doctor or authorised mental health practitioner about whether the behaviour of the person, or other relevant factors, could reasonably be considered to satisfy the requirements under section 502(2) for making an examination authority for the person.

Note—

The application must be made in the approved form. See section 723.

- (3) In this section—

clinical matters, for a person, means—

- (a) general information about the treatment criteria, their application to the person, and whether there is a less restrictive way for the person to receive treatment and care for the person's mental illness; and
- (b) whether the behaviour of the person, or other relevant factors, could reasonably be considered to satisfy the requirements under section 502(2) for making an examination authority for the person; and
- (c) options for the treatment and care of the person; and
- (d) how the person might be encouraged to seek voluntary treatment and care.

501 Notice of hearing

- (1) The tribunal must give the applicant written notice of the hearing of the application.
- (2) The notice must be given—
- (a) at least 3 days before the hearing; or
- (b) if the applicant agrees to a shorter period before the hearing—at least the agreed period before the hearing.

[s 502]

502	Decision on application	1
(1)	In deciding the application, the tribunal must issue, or refuse to issue, an examination authority for the person.	2 3
(2)	However, the tribunal may issue an examination authority for the person only if the tribunal considers—	4 5
(a)	the person has, or may have, a mental illness; and	6
(b)	the person does not, or may not, have capacity to consent to be treated for the mental illness; and	7 8
(c)	either—	9
(i)	reasonable attempts have been made to encourage the person to be treated voluntarily for the person’s mental illness; or	10 11 12
(ii)	it is not practicable to attempt to encourage the person to be treated voluntarily for the person’s mental illness; and	13 14 15
(d)	there is, or may be, an imminent risk, because of the person’s mental illness, of—	16 17
(i)	serious harm to the person or someone else; or	18
(ii)	the person suffering serious mental or physical deterioration.	19 20
(3)	An examination authority must—	21
(a)	be in the approved form; and	22
(b)	state the authorised mental health service responsible for the examination of the person under the authority.	23 24
503	Duration of examination authority	25
	An examination authority is in force for 7 days after the day it is issued.	26 27

504	Copy of examination authority to be given to administrator of authorised mental health service	1 2
	The tribunal must give a copy of an examination authority to the administrator of the authorised mental health service stated in the authority.	3 4 5
Part 9	Applications for approval of regulated treatment	6 7
Division 1	Electroconvulsive therapy	8
505	Who may apply	9
	A doctor may apply to the tribunal for approval to perform electroconvulsive therapy on another person if the doctor is satisfied—	10 11 12
	(a) the person is an adult and is unable to give informed consent to the therapy; or	13 14
	(b) the person is a minor.	15
506	Notice of hearing	16
	(1) The tribunal must give the following persons written notice of the hearing of the application—	17 18
	(a) the person the subject of the application;	19
	(b) the applicant;	20
	(c) the administrator of the authorised mental health service identified in the application as the service in which the electroconvulsive therapy is to be performed.	21 22 23
	(2) The notice must be given—	24

[s 507]

- (a) if a certificate under section 236(3) is in force for the person—
 - (i) at least 3 days before the hearing; or
 - (ii) if the person, or an interested person for the person, agrees to a shorter period before the hearing—at least the agreed period before the hearing; or
- (b) otherwise—
 - (i) at least 7 days before the hearing; or
 - (ii) if the person, or an interested person for the person, agrees to a shorter period before the hearing—at least the agreed period before the hearing.

507 Decision on application

- (1) In deciding the application, the tribunal must give, or refuse to give, approval for electroconvulsive therapy to be performed on the person.
- (2) In deciding whether to give, or refuse to give, the approval, the tribunal must have regard to—
 - (a) if the application relates to an adult who is unable to give informed consent to the therapy—any views, wishes and preferences the adult has expressed about the therapy in an advance health directive; or
 - (b) if the application relates to a minor—
 - (i) the views of the minor’s parents; and
 - (ii) the views, wishes and preferences of the minor.
- (3) The tribunal may give the approval only if the tribunal is satisfied—
 - (a) the performance of the therapy on the person is in the person’s best interests; and
 - (b) evidence supports the effectiveness of the therapy for the person’s particular mental illness; and

(c)	if the therapy has previously been performed on the person—of the effectiveness of the therapy for the person; and	1 2 3
(d)	if the person is a minor—evidence supports the effectiveness of the therapy for persons of the minor’s age.	4 5 6
(4)	If the tribunal gives the approval, the approval—	7
(a)	must state the number of treatments that may be performed in a stated period under the approval; and	8 9
(b)	may be made subject to the conditions the tribunal considers appropriate.	10 11
Division 2	Non-ablative neurosurgical procedures	12 13
508	Who may apply	14
(1)	A doctor may apply to the tribunal for approval to perform a non-ablative neurosurgical procedure on another person if the doctor is satisfied the person has given informed consent to the treatment under chapter 7, part 9.	15 16 17 18
(2)	The application must be accompanied by a copy of the person’s consent.	19 20
509	Notice of hearing	21
(1)	The tribunal must give the following persons written notice of the hearing of the application—	22 23
(a)	the person the subject of the application;	24
(b)	the applicant;	25
(c)	the administrator of the authorised mental health service identified in the application as the service in which the non-ablative neurosurgical procedure is to be performed.	26 27 28 29

[s 510]

- (2) The notice must be given at least 7 days before the hearing. 1
- 510 Decision on application** 2
- (1) In deciding the application, the tribunal must give, or refuse to 3
give, approval for the non-ablative neurosurgical procedure to 4
be performed on the person. 5
- (2) The tribunal may give the approval only if the tribunal is 6
satisfied— 7
- (a) the applicant has given the person the explanation 8
required under section 233; and 9
- (b) the person has given informed consent to the procedure 10
under chapter 7, part 9; and 11
- (c) the procedure has clinical merit and is appropriate in the 12
circumstances; and 13
- (d) alternatives to the procedure that could reasonably be 14
expected to produce a sufficient and lasting benefit for 15
the person have previously been provided to the person 16
without a sufficient and lasting benefit; and 17
- (e) the procedure is to be performed by an appropriately 18
qualified person. 19
- (3) The tribunal may give the approval subject to the conditions 20
the tribunal considers appropriate. 21

Part 10	Applications for approval to transfer particular persons into and out of Queensland	1 2 3
Division 1	Transfers into Queensland	4
511	Definitions for div 1	5
	In this division—	6
	<i>interstate forensic order</i> means an order made under a corresponding law of another State, however described, that provides for similar matters to a forensic order (mental health) or forensic order (disability).	7 8 9 10
	<i>interstate transfer requirements</i> , for a person subject to an interstate forensic order, means the requirements, under the corresponding law of the State in which the order was made, for the person’s transfer to another State.	11 12 13 14
512	Who may apply	15
	A person subject to an interstate forensic order, or an interested person for the person, may apply to the tribunal for approval of the transfer of the person from an interstate mental health service to—	16 17 18 19
	(a) a stated authorised mental health service; or	20
	(b) the forensic disability service.	21
513	Requirements for application	22
	(1) The application must—	23
	(a) state the reasons why the transfer would be in the best interests of the person, including, for example, closer proximity to the person’s family, carers and other support persons; and	24 25 26 27

[s 514]

- (b) state— 1
 - (i) the authorised mental health service proposed to be 2
responsible for the person; or 3
 - (ii) that the forensic disability service is proposed to be 4
responsible for the person; and 5
- (c) include a written statement from the relevant person that 6
the relevant person considers the interstate transfer 7
requirements for the person may be satisfied. 8
- (2) In this section— 9
 - relevant person* means— 10
 - (a) if an authorised mental health service is proposed to be 11
responsible for the person—the chief psychiatrist; or 12
 - (b) if the forensic disability service is proposed to be 13
responsible for the person—the director of forensic 14
disability. 15
- 514 Notice of hearing** 16
 - (1) The tribunal must give each of the following persons written 17
notice of the hearing of the application— 18
 - (a) the person; 19
 - (b) if the person is not the applicant—the applicant; 20
 - (c) if an authorised mental health service is stated in the 21
application— 22
 - (i) the administrator of the service; and 23
 - (ii) the chief psychiatrist; 24
 - (d) if the forensic disability service is stated in the 25
application— 26
 - (i) the administrator of the service; and 27
 - (ii) the director of forensic disability; 28
 - (e) the Attorney-General. 29

-
- (2) The notice must be given at least 14 days before the hearing. 1
- 515 Decision on application 2**
- (1) In deciding the application, the tribunal must approve, or 3
refuse to approve, the transfer. 4
- (2) The tribunal may approve the transfer only if satisfied— 5
- (a) the transfer is in the best interests of the person, 6
including, for example, closer proximity to the person’s 7
family, carers and other support persons; and 8
- (b) either— 9
- (i) if an authorised mental health service is stated in 10
the application—appropriate treatment and care is 11
available for the person at the service; or 12
- (ii) if the forensic disability service is stated in the 13
application—appropriate care is available for the 14
person at the forensic disability service; and 15
- (c) a forensic order (mental health) or forensic order 16
(disability) is necessary, because of the person’s mental 17
condition, to protect the safety of the community, 18
including from the risk of serious harm to other persons 19
or property. 20
- (3) The tribunal may give the approval subject to the conditions 21
the tribunal considers appropriate. 22
- 516 Making of forensic order 23**
- (1) If the tribunal approves the transfer under section 515, the 24
tribunal must make a forensic order (mental health) for the 25
person unless subsection (2) applies. 26
- (2) The tribunal must make a forensic order (disability) for the 27
person if the tribunal considers— 28
- (a) the person has an intellectual disability but does not 29
have a dual disability; or 30

[s 517]

- (b) the person has a dual disability but does not require involuntary treatment and care for the person's mental illness. 1
2
3
 - (3) The forensic order (mental health) or forensic order (disability) takes effect when the person arrives in Queensland. 4
5
6
 - (4) For making a forensic order (mental health) or forensic order (disability) under this division, section 135 and chapter 5, part 4, division 2, subdivision 2 apply as if— 7
8
9
 - (a) a reference in the provisions to the Mental Health Court were a reference to the tribunal; and 10
11
 - (b) a reference in the provisions to the person the subject of the reference were a reference to the person subject to the interstate forensic order. 12
13
14
- 517 When approval takes effect** 15
- An approval of a transfer under this division takes effect when the interstate transfer requirements for the person have been satisfied. 16
17
18
- 518 Transport of person** 19
- (1) This section applies if— 20
 - (a) the tribunal has approved the transfer of a person under this division; and 21
22
 - (b) the interstate transfer requirements for the person have been satisfied. 23
24
 - (2) As soon as practicable after the interstate transfer requirements have been satisfied, the administrator of the authorised mental health service, or of the forensic disability service, must arrange for the person to be transported to the service by 1 of the following persons (each a *transport officer*)— 25
26
27
28
29
30
 - (a) an authorised person; 31

Note—

For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.

- (b) if the person is to be transported to the forensic disability service—an authorised practitioner under the Forensic Disability Act;
 - (c) a person who is authorised under a corresponding law to transport the person from the interstate mental health service to the authorised mental health service or the forensic disability service.
- (3) A transport officer may transport the person to the authorised mental health service or the forensic disability service under the tribunal’s approval.

Division 2 Transfers out of Queensland 14

519 Definition for div 2 15

In this division— 16

interstate transfer requirements, for a person subject to a forensic order (mental health), forensic order (disability) or treatment support order, means the requirements, under the corresponding law of another State, for the person’s transfer to the other State. 17
18
19
20
21

520 Who may apply 22

- (1) A person subject to a forensic order (mental health), forensic order (disability) or treatment support order, or an interested person for the person, may apply to the tribunal for approval of the transfer of the person from an authorised mental health service or the forensic disability service to a stated interstate mental health service. 23
24
25
26
27
28
- (2) However, this section does not apply to— 29
 - (a) a person who is a classified patient; or 30

[s 521]

(b)	a person whom the Mental Health Court has decided is unfit for trial and the unfitness for trial is not permanent.	1 2
521	Requirements for application	3
(1)	The application must—	4
(a)	state the reasons why the transfer would be in the best interests of the person, including, for example, closer proximity to the person’s family, carers and other support persons; and	5 6 7 8
(b)	include a written statement from the relevant person that the relevant person considers the interstate transfer requirements for the person may be satisfied.	9 10 11
(2)	In this section—	12
	<i>relevant person</i> means—	13
(a)	if an authorised mental health service is responsible for the person—the chief psychiatrist; or	14 15
(b)	if the forensic disability service is responsible for the person—the director of forensic disability.	16 17
522	Notice of hearing	18
(1)	The tribunal must give each of the following persons written notice of the hearing of the application—	19 20
(a)	the person;	21
(b)	if the person is not the applicant—the applicant;	22
(c)	if an authorised mental health service is responsible for the person—	23 24
(i)	the administrator of the service; and	25
(ii)	the chief psychiatrist;	26
(d)	if the forensic disability service is responsible for the person—	27 28
(i)	the administrator of the service; and	29

(ii)	the director of forensic disability;	1
(e)	the Attorney-General.	2
(2)	The notice must be given at least 14 days before the hearing.	3
523	Decision on application	4
(1)	In deciding the application, the tribunal must approve, or refuse to approve, the transfer.	5 6
(2)	The tribunal may approve the transfer only if satisfied—	7
(a)	the transfer is in the best interests of the person, including, for example, closer proximity to the person’s family, carers and other support persons; and	8 9 10
(b)	appropriate treatment and care is available for the person at the interstate mental health service; and	11 12
(c)	the arrangements are adequate to protect the safety of the community.	13 14
(3)	The tribunal may give the approval subject to the conditions the tribunal considers appropriate.	15 16
524	When approval takes effect	17
	An approval of a transfer under this division takes effect when the interstate transfer requirements for the person have been satisfied.	18 19 20
525	Transport of person	21
(1)	This section applies if—	22
(a)	the tribunal has approved the transfer of a person under this division; and	23 24
(b)	the interstate transfer requirements for the person have been satisfied.	25 26
(2)	As soon as practicable after the interstate transfer requirements have been satisfied, the administrator of the	27 28

[s 526]

- authorised mental health service, or of the forensic disability service, must arrange for the person to be transported to the interstate mental health service by 1 of the following persons (each a *transport officer*)—
- (a) an authorised person;
- Note—*
- For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.
- (b) if the person is to be transported from the forensic disability service—an authorised practitioner under the Forensic Disability Act;
 - (c) a person who is authorised under a corresponding law to transport the person from the authorised mental health service or the forensic disability service to the interstate mental health service.
- (3) A transport officer may transport the person to the interstate mental health service under the tribunal’s approval.

526 Effect on order

- (1) This section applies to a forensic order (mental health), forensic order (disability) or treatment support order to which a person is subject when the person is transferred to an interstate mental health service under this division.
- (2) The order has effect only if the person returns to Queensland and while the person is in Queensland.
- (3) Also, the order ends—
 - (a) on the last day of any non-revocation period for the order if, on that day, the person has been out of Queensland for a continuous period of 3 years; or
 - (b) if paragraph (a) does not apply—if the person is out of Queensland for a continuous period of 3 years.
- (4) In this section—

out of Queensland, in relation to a person, means out of 1
Queensland because of the person's transfer under this 2
division to an interstate mental health service. 3

Part 11 Miscellaneous 4

527 Relationship with ch 16, pt 2 5

To the extent of any inconsistency with chapter 16, part 2, this 6
chapter prevails. 7

528 Use of victim impact statement by tribunal 8

- (1) This section applies if the tribunal is required to have regard to 9
a victim impact statement in deciding a matter under this 10
chapter. 11
- (2) The tribunal may place the weight on the victim impact 12
statement that it considers appropriate. 13

Chapter 13 Appeals 14

Part 1 Preliminary 15

529 Purpose of ch 13 16

This chapter provides for the following— 17

(a) appeals to the tribunal; 18

(b) appeals to the Mental Health Court against a decision of 19
the tribunal; 20

[s 530]

- (c) appeals to the Court of Appeal against a decision of the
Mental Health Court. 1
2

Part 2 Appeals to tribunal 3

530 Definitions for pt 2 4

In this part— 5

decision notice means a notice about a decision given under
section 312(4), 313(3), 317(7), 319(7), 320(3), 321(4) or
406(3). 6
7
8

Note— 9

A decision to which a notice under section 317(7), 319(7), 320(3) or
321(4) relates may be made in relation to a forensic disability client. See
section 325. 10
11
12

party, to an appeal, means— 13

- (a) for an appeal against a decision of the administrator of
an authorised mental health service—the appellant or
the administrator; or 14
15
16
- (b) for an appeal against a decision of the chief
psychiatrist—the appellant or the chief psychiatrist; or 17
18
- (c) for an appeal against a decision of the director of
forensic disability—the appellant or the director. 19
20

531 Appeal to tribunal 21

A person who has been given, or is entitled to be given, a
decision notice may appeal to the tribunal against the decision
to which the notice relates. 22
23
24

532 How to start appeal 25

- (1) The appeal is started by giving the tribunal a notice of appeal. 26

-
- | | | |
|------------|--|----------------|
| (2) | The notice of appeal must be given within 28 days after— | 1 |
| (a) | the day the person is given the decision notice; or | 2 |
| (b) | if the person is not given a decision notice—the day the person otherwise becomes aware of the decision. | 3
4 |
| (3) | The tribunal may, at any time, extend the time for giving the notice of appeal. | 5
6 |
| (4) | The notice of appeal must— | 7 |
| (a) | be in the approved form; and | 8 |
| (b) | state fully the grounds of the appeal and the facts relied on. | 9
10 |
| 533 | Notice of appeal and hearing | 11 |
| (1) | The tribunal must give the parties to the appeal written notice of the hearing of the appeal. | 12
13 |
| (2) | The notice must be given— | 14 |
| (a) | for an appeal against a decision for which a decision notice must be given under section 312(4) or 313(3)— | 15
16 |
| (i) | at least 3 days before the hearing; or | 17 |
| (ii) | if the appellant agrees to a shorter period before the hearing—at least the agreed period before the hearing; or | 18
19
20 |
| (b) | for an appeal against another decision—at least 7 days before the hearing. | 21
22 |
| (3) | The notice must state the following— | 23 |
| (a) | the time and place of the hearing of the appeal; | 24 |
| (b) | the nature of the hearing; | 25 |
| (c) | the parties' rights to be represented at the hearing. | 26 |

[s 534]

534	Stay of decision pending appeal	1
(1)	The tribunal may stay the decision appealed against to secure the effectiveness of the appeal.	2 3
(2)	A stay—	4
(a)	may be given on the reasonable conditions the tribunal considers appropriate; and	5 6
(b)	operates for the period fixed by the tribunal; and	7
(c)	may be amended or revoked by the tribunal.	8
(3)	The period of a stay must not extend past the time when the appeal is decided.	9 10
(4)	A notice of appeal affects the decision the subject of the notice, or the carrying out of the decision, only if the decision is stayed.	11 12 13
535	Appeal powers	14
(1)	The procedure for the appeal is in accordance with the tribunal rules or, if the rules make no provision or insufficient provision, as directed by the tribunal.	15 16 17
(2)	The appeal is by way of rehearing.	18
(3)	In deciding the appeal, the tribunal may—	19
(a)	confirm the decision appealed against; or	20
(b)	set aside the decision appealed against and substitute another decision; or	21 22
(c)	set aside the decision appealed against and return the matter to the person who made the decision with the directions the tribunal considers appropriate.	23 24 25
(4)	If the tribunal substitutes another decision, the substituted decision is for this Act, other than this chapter, taken to be the decision of the person who made the decision appealed against.	26 27 28 29

Part 3	Appeals to Mental Health Court	1
Division 1	Preliminary	2
536	Definition for pt 3	3
	In this part—	4
	<i>party</i> , to an appeal against a decision, means a person who is a party to the appeal under section 538.	5 6
Division 2	Making and hearing appeals	7
537	Who may appeal	8
	A person mentioned in schedule 2, column 2 may appeal to the Mental Health Court against a decision of the tribunal mentioned opposite the person in schedule 2, column 1.	9 10 11
538	Parties to appeal	12
(1)	Each person entitled to appeal against the decision is a party to the appeal.	13 14
(2)	However, if the person is entitled to appeal against the decision only because the person is an interested person for a person who is the subject of the decision, the person is not a party to the appeal.	15 16 17 18
(3)	If subsection (2) applies, the person who is the subject of the decision is taken to be a party to the appeal.	19 20
(4)	Also, unless the chief psychiatrist is the appellant, the chief psychiatrist is a party to the appeal only if the chief psychiatrist elects to be a party to the appeal.	21 22 23
(5)	Further, unless the director of forensic disability is the appellant, the director of forensic disability is a party to the	24 25

[s 539]

appeal only if the director of forensic disability elects to be a party to the appeal. 1
2

539 How to start appeal 3

- (1) The appeal is started by filing a notice of appeal in the registry. 4
5
- (2) The notice of appeal must be filed— 6
- (a) if the chief psychiatrist is the appellant—within 60 days after the decision is made; or 7
8
 - (b) if paragraph (a) does not apply—within 60 days after the appellant receives written notice of the decision. 9
10
- (3) The Mental Health Court may, at any time, extend the time for filing the notice of appeal. 11
12
- (4) The notice of appeal must— 13
- (a) be in the approved form; and 14
 - (b) state fully the grounds of the appeal and the facts relied on. 15
16

540 Frivolous or vexatious appeal 17

- (1) The Mental Health Court may dismiss the appeal if the court is satisfied the appeal is frivolous or vexatious. 18
19
- (2) The court may dismiss an appeal under this section without a hearing. 20
21

541 Notice of appeal and hearing 22

- (1) Within 7 days after the notice of appeal is filed, the registrar must give written notice of the appeal to each other person entitled to appeal against the decision, other than an interested person for the person the subject of the decision. 23
24
25
26
- (2) The registrar must also give at least 7 days written notice of the hearing of the appeal to— 27
28

(a)	the parties to the appeal; and	1
(b)	if an authorised mental health service is responsible for the person the subject of the appeal—the administrator of the service; and	2 3 4
(c)	if the forensic disability service is responsible for the person the subject of the appeal—the administrator of the service.	5 6 7
(3)	The notice of the hearing of the appeal must state the following—	8 9
(a)	the time and place of the hearing of the appeal;	10
(b)	the nature of the hearing;	11
(c)	the parties’ rights to be represented at the hearing.	12
542	Stay of decision pending appeal	13
(1)	The Mental Health Court may stay the decision appealed against to secure the effectiveness of the appeal.	14 15
(2)	A stay—	16
(a)	may be given on the conditions the court considers appropriate; and	17 18
(b)	operates for the period fixed by the court; and	19
(c)	may be amended or revoked by the court.	20
(3)	The period of a stay must not extend past the time when the appeal is decided.	21 22
(4)	The court may order that the person the subject of the appeal be detained in a stated authorised mental health service for the period of the stay.	23 24 25
	<i>Note—</i>	26
	An order made under subsection (4) is a type of judicial order. A judicial order does not authorise the provision of involuntary treatment and care to the person.	27 28 29

[s 543]

- (5) For subsection (4), an authorised person may transport the person to an inpatient unit of the authorised mental health service stated in the order. 1
2
3

Note— 4

For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5. 5
6

- (6) The administrator of the authorised mental health service stated in the order may detain the person in the service under the order. 7
8
9

543 Notice of stay of decision on review of person's fitness for trial 10
11

- (1) This section applies if— 12
- (a) the decision appealed against is a decision of the tribunal on a review of a person's fitness for trial; and 13
14
 - (b) under section 542, the Mental Health Court stays the decision. 15
16
- (2) The registrar must give the chief executive (justice) written notice of the stay of the decision. 17
18
- (3) As soon as practicable after receiving a notice under subsection (2), the chief executive (justice) must give a copy of the notice to— 19
20
21
- (a) the registrar of the court in which the proceeding for the offence in relation to the review of the fitness for trial of the person is to be heard; and 22
23
24
 - (b) the prosecuting authority for the offence; and 25
 - (c) if the person the subject of the decision is a child within the meaning of the *Youth Justice Act 1992*—the chief executive (youth justice). 26
27
28

544	Appeal powers	1
(1)	The procedure for the appeal is in accordance with court rules for the Mental Health Court or, if the rules make no provision or insufficient provision, as directed by the Mental Health Court.	2 3 4 5
(2)	The appeal is by way of rehearing.	6
(3)	In deciding the appeal, the Mental Health Court may—	7
(a)	confirm the decision appealed against; or	8
(b)	set aside the decision appealed against and substitute another decision; or	9 10
(c)	set aside the decision appealed against and return the matter to the tribunal with the directions the Mental Health Court considers appropriate.	11 12 13
(4)	If the Mental Health Court substitutes another decision, the substituted decision is taken for this Act, other than this chapter, to be a decision of the tribunal.	14 15 16
545	Mental Health Court may make forensic order or treatment support order	17 18
(1)	This section applies if—	19
(a)	the decision appealed against is a decision of the tribunal that a person is fit for trial; and	20 21
	<i>Note—</i>	22
	The tribunal may decide a person is fit for trial on a review under chapter 12, part 6.	23 24
(b)	the forensic order or treatment support order to which the person was subject has ended under section 495(2); and	25 26 27
(c)	the Mental Health Court decides on the appeal that the person is unfit for trial.	28 29
(2)	The Mental Health Court may make the orders the court may make under chapter 5, part 4 as if a reference in the part to a	30 31

[s 546]

reference in relation to a person were a reference to an appeal 1
against a decision of the tribunal that a person is fit for trial. 2

546 Mental Health Court's decision final 3

- (1) Unless the Supreme Court decides the Mental Health Court's 4
decision on the appeal is affected by jurisdictional error, the 5
decision— 6
- (a) is final and conclusive; and 7
 - (b) can not be challenged, appealed against, reviewed, 8
quashed, set aside or called in question in any other way 9
under the *Judicial Review Act 1991* or otherwise 10
(whether by the Supreme Court, another court, a tribunal 11
or another entity); and 12
 - (c) is not subject to any declaratory, injunctive or other 13
order of the Supreme Court, another court, a tribunal or 14
another entity on any ground. 15
- (2) The *Judicial Review Act 1991*, part 5 applies to the Mental 16
Health Court's decision to the extent it is affected by 17
jurisdictional error. 18

Part 4 Appeals to Court of Appeal 19

547 Who may appeal 20

The following persons may appeal to the Court of Appeal 21
against a decision of the Mental Health Court on a reference 22
in relation to a person— 23

- (a) the person; 24
- (b) the Attorney-General; 25
- (c) the chief psychiatrist; 26
- (d) the director of forensic disability. 27

-
- 548 How to start appeal** 1
- (1) An appeal is started by filing a notice of appeal with the registrar of the Court of Appeal. 2
3
 - (2) The notice of appeal must be filed within 28 days after the appellant receives notice of the decision or otherwise becomes aware of the decision. 4
5
6
 - (3) However, the Court of Appeal may at any time extend the period for filing the notice of appeal. 7
8
 - (4) The notice of appeal must— 9
 - (a) be in the approved form; and 10
 - (b) state fully the grounds of the appeal and the facts relied on. 11
12
- 549 Appeal powers** 13
- (1) The procedure for the appeal is to be in accordance with court rules for the Court of Appeal or, if the rules make no provision or insufficient provision, as directed by the Court of Appeal. 14
15
16
 - (2) In deciding the appeal, the Court of Appeal may— 17
 - (a) confirm the decision appealed against; or 18
 - (b) set aside the decision appealed against and substitute another decision; or 19
20
 - (c) set aside the decision appealed against and return the matter to the Mental Health Court with the directions the Court of Appeal considers appropriate. 21
22
23
 - (3) If the Court of Appeal substitutes another decision, the substituted decision is taken for this Act, other than this chapter, to be the decision of the Mental Health Court. 24
25
26
 - (4) If the Court of Appeal returns the matter to the Mental Health Court, the Court of Appeal must order that— 27
28
 - (a) either— 29
-

[s 550]

- (i) the person be remanded in custody and any bail granted under the *Bail Act 1980* for the person be revoked; or 1
2
3
 - (ii) bail be granted, enlarged or varied under the *Bail Act 1980* for the person; or 4
5
 - (b) the person be detained in a stated authorised mental health service. 6
7
- Note—* 8
- An order made under paragraph (b) is a type of judicial order. A judicial order does not authorise the provision of involuntary treatment and care to the person. 9
10
11
- (5) For subsection (4)(b), an authorised person may transport the person to an inpatient unit of the authorised mental health service stated in the order. 12
13
14
- Note—* 15
- For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5. 16
17
- (6) The person the subject of the reference may be detained under the court's order in an inpatient unit of the authorised mental health service stated in the order. 18
19
20

550 Notice of decision 21

The registrar of the Court of Appeal must give a copy of the decision on the appeal to the registrar of the Mental Health Court. 22
23
24

Chapter 14	Monitoring and enforcement	1
		2
Part 1	Preliminary	3
551	Purpose of ch 14	4
	This purpose of this chapter is to provide for—	5
	(a) the appointment of inspectors; and	6
	(b) the functions and powers of inspectors in relation to—	7
	(i) investigating, monitoring and enforcing compliance with this Act; and	8
	(ii) investigating a matter under chapter 10, part 4.	9
		10
552	Definitions for ch 14	11
	In this chapter—	12
	<i>court</i> means a Magistrates Court.	13
	<i>electronic document</i> means a document of a type under the <i>Acts Interpretation Act 1954</i> , schedule 1, definition <i>document</i> , paragraph (c).	14
	<i>former owner</i> see section 588(1).	15
	<i>general power</i> see section 575(1).	16
	<i>help requirement</i> see section 576(1).	17
	<i>identity card</i> , for an inspector, means an identity card issued under section 558(1).	18
	<i>information notice</i> , about a decision, means a notice stating the following—	19
	(a) the decision;	20
	(b) the reasons for it;	21
		22
		23
		24
		25

[s 553]

- (c) that the person to whom the notice is given may apply to the chief psychiatrist for a review of the decision within 28 days after the person receives the notice; 1
2
3
- (d) how to apply for a review. 4
- information requirement* see section 595(3). 5
- inspector* means a person who holds office under this chapter as an inspector. 6
7
- offence warning*, for a help requirement or personal details requirement, means a warning that, without a reasonable excuse, it is an offence for the person to whom the requirement is made not to comply with it. 8
9
10
11
- owner*, of a thing that has been seized under this chapter, includes a person who would be entitled to possession of the thing had it not been seized. 12
13
14
- personal details requirement* see section 593(5). 15
- person in control*, of a thing, includes anyone who reasonably appears to be, claims to be, or acts as if he or she is, the person in possession or control of the thing. 16
17
18
- reasonably suspects* means suspects on grounds that are reasonable in the circumstances. 19
20

Part 2 **General provisions about inspectors** 21 22

Division 1 **Appointment** 23

553 **Appointment and qualifications** 24

- (1) The chief psychiatrist may, by instrument in writing, appoint any of the following persons as inspectors— 25
26

-
- (a) a public service employee of the department; 1
- (b) a health service employee; 2
- (c) other persons prescribed by regulation. 3
- (2) Also, the chief psychiatrist may, by instrument in writing, 4
appoint a health practitioner, lawyer or another person as an 5
inspector for investigating a matter under chapter 10, part 4. 6
- (3) However, the chief psychiatrist may appoint a person as an 7
inspector under subsection (1) or (2) only if the chief 8
psychiatrist is satisfied the person is appropriately qualified. 9
- (4) Also, the chief psychiatrist is an inspector. 10
- 554 Functions of inspectors 11**
- An inspector's functions are as follows— 12
- (a) for an inspector appointed under section 553(1)—to 13
investigate, monitor and enforce compliance with this 14
Act; 15
- (b) for an inspector appointed under section 553(1) or 16
(2)—to investigate a matter under chapter 10, part 4; 17
- (c) for the chief psychiatrist—each of the functions 18
mentioned in paragraphs (a) and (b). 19
- 555 Appointment conditions and limit on powers 20**
- (1) An inspector holds office on any conditions stated in— 21
- (a) the inspector's instrument of appointment; or 22
- (b) a signed notice given to the inspector; or 23
- (c) a regulation. 24
- (2) The instrument of appointment, a signed notice given to the 25
inspector or a regulation may limit the inspector's powers. 26
- (3) In this section— 27
- signed notice* means a notice signed by the chief psychiatrist. 28

[s 556]

556	When office ends	1
(1)	The office of a person as an inspector ends if any of the following happens—	2 3
(a)	the term of office stated in a condition of office ends;	4
(b)	under another condition of office, the office ends;	5
(c)	the inspector’s resignation under section 557 takes effect.	6 7
(2)	Subsection (1) does not limit the ways the office of a person as an inspector ends.	8 9
(3)	In this section—	10
	<i>condition of office</i> means a condition under which the inspector holds office.	11 12
557	Resignation	13
	An inspector may resign by signed notice given to the chief psychiatrist.	14 15
Division 2	Identity cards	16
558	Issue of identity card	17
(1)	The chief psychiatrist must issue an identity card to each inspector.	18 19
(2)	The identity card must—	20
(a)	contain a recent photo of the inspector; and	21
(b)	contain a copy of the inspector’s signature; and	22
(c)	identify the person as an inspector under this Act; and	23
(d)	state an expiry date for the card.	24
(3)	This section does not prevent the issue of a single identity card to a person for this Act and other purposes.	25 26

559	Production or display of identity card	1
(1)	In exercising a power in relation to a person in the person's presence, an inspector must—	2 3
(a)	produce the inspector's identity card for the person's inspection before exercising the power; or	4 5
(b)	have the identity card displayed so it is clearly visible to the person when exercising the power.	6 7
(2)	However, if it is not practicable to comply with subsection (1), the inspector must produce the identity card for the person's inspection at the first reasonable opportunity.	8 9 10
(3)	For subsection (1), an inspector does not exercise a power in relation to a person only because the inspector has entered a place as mentioned in section 563(1)(b) or (d).	11 12 13
560	Return of identity card	14
	If the office of a person as an inspector ends, the person must return the person's identity card to the chief psychiatrist within 21 days after the office ends unless the person has a reasonable excuse.	15 16 17 18
	Maximum penalty—20 penalty units.	19
Division 3	Miscellaneous provisions	20
561	References to exercise of powers	21
	If—	22
(a)	a provision of this chapter refers to the exercise of a power by an inspector; and	23 24
(b)	there is no reference to a specific power;	25
	the reference is to the exercise of all or any inspectors' powers under this chapter or a warrant, to the extent the powers are relevant.	26 27 28

[s 562]

562	Reference to document includes reference to reproductions from electronic document	1 2
	A reference in this chapter to a document includes a reference to an image or writing—	3 4
	(a) produced from an electronic document; or	5
	(b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.	6 7 8
Part 3	Entry of places by inspectors	9
Division 1	Power to enter	10
563	General power to enter places	11
(1)	An inspector may enter a place if—	12
	(a) an occupier of the place consents under division 2 to the entry and section 566 has been complied with for the occupier; or	13 14 15
	(b) it is a public place and the entry is made when the place is open to the public; or	16 17
	(c) the entry is authorised under a warrant and, if there is an occupier of the place, section 573 has been complied with for the occupier; or	18 19 20
	(d) it is an authorised mental health service or public sector health service facility and is—	21 22
	(i) open to the public; or	23
	(ii) otherwise open for entry.	24
(2)	If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any	25 26

conditions of the consent and ceases if the consent is
withdrawn. 1
2

- (3) If the power to enter is under a warrant, the power is subject to
the terms of the warrant. 3
4

Division 2 Entry by consent 5

564 Application of div 2 6

This division applies if an inspector intends to ask an occupier
of a place to consent to the inspector or another inspector
entering the place under section 563(1)(a). 7
8
9

565 Incidental entry to ask for access 10

For the purpose of asking the occupier for the consent, an
inspector may, without the occupier's consent or a warrant— 11
12

- (a) enter land around premises at the place to an extent that
is reasonable to contact the occupier; or 13
14
- (b) enter part of the place the inspector reasonably
considers members of the public ordinarily are allowed
to enter when they wish to contact an occupier of the
place. 15
16
17
18

566 Matters inspector must tell occupier 19

Before asking for the consent, the inspector must give a
reasonable explanation to the occupier— 20
21

- (a) about the purpose of the entry, including the powers
intended to be exercised; and 22
23
- (b) that the occupier is not required to consent; and 24
- (c) that the consent may be given subject to conditions and
may be withdrawn at any time. 25
26

[s 567]

567	Consent acknowledgement	1
(1)	If the consent is given, the inspector may ask the occupier to sign an acknowledgement of the consent.	2 3
(2)	The acknowledgement must state—	4
(a)	the purpose of the entry, including the powers to be exercised; and	5 6
(b)	the following has been explained to the occupier—	7
(i)	the purpose of the entry, including the powers intended to be exercised;	8 9
(ii)	that the occupier is not required to consent;	10
(iii)	that the consent may be given subject to conditions and may be withdrawn at any time; and	11 12
(c)	the occupier gives the inspector or another inspector consent to enter the place and exercise the powers; and	13 14
(d)	the time and day the consent was given; and	15
(e)	any conditions of the consent.	16
(3)	If the occupier signs the acknowledgement, the inspector must immediately give a copy to the occupier.	17 18
(4)	If—	19
(a)	an issue arises in a proceeding about whether the occupier consented to the entry; and	20 21
(b)	a signed acknowledgement complying with subsection (2) for the entry is not produced in evidence;	22 23
	the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.	24 25

Division 3	Entry under warrant	1
Subdivision 1	Obtaining warrant	2
568	Application for warrant	3
(1)	An inspector may apply to a magistrate for a warrant for a place.	4 5
(2)	The inspector must prepare a written application that states the grounds on which the warrant is sought.	6 7
(3)	The written application must be sworn.	8
(4)	The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.	9 10 11 12
	<i>Example—</i>	13
	The magistrate may require additional information supporting the written application to be given by statutory declaration.	14 15
569	Issue of warrant	16
(1)	The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting that there is at the place, or will be at the place within the next 7 days, a particular thing or activity that may provide evidence—	17 18 19 20 21
(a)	about a matter being investigated by the inspector under chapter 10, part 4; or	22 23
(b)	of an offence against this Act.	24
(2)	The warrant must state—	25
(a)	the place to which the warrant applies; and	26
(b)	that a stated inspector or any inspector may with necessary and reasonable help and force—	27 28

[s 570]

- (i) enter the place and any other place necessary for entry to the place; and 1
2
- (ii) exercise the inspector's powers; and 3
- (c) particulars of the matter being investigated, or offence, that the magistrate considers appropriate; and 4
5
- (d) the name of the person involved in the matter being investigated, or suspected of having committed the offence, unless the name is unknown or the magistrate considers it inappropriate to state the name; and 6
7
8
9
- (e) the evidence that may be seized under the warrant; and 10
- (f) the hours of the day or night when the place may be entered; and 11
12
- (g) the magistrate's name; and 13
- (h) the day and time of the warrant's issue; and 14
- (i) the day, within 14 days after the warrant's issue, the warrant ends. 15
16

570 Electronic application 17

- (1) An application under section 568 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the inspector reasonably considers it necessary because of— 18
19
20
21
 - (a) urgent circumstances; or 22
 - (b) other special circumstances, including, for example, the inspector's remote location. 23
24
- (2) The application— 25
 - (a) may not be made before the inspector prepares the written application under section 568(2); but 26
27
 - (b) may be made before the written application is sworn. 28

-
- 571 Additional procedure if electronic application** 1
- (1) For an application made under section 570, the magistrate 2
may issue the warrant (the *original warrant*) only if the 3
magistrate is satisfied— 4
- (a) it was necessary to make the application under section 5
570; and 6
- (b) the way the application was made under section 570 was 7
appropriate. 8
- (2) After the magistrate issues the original warrant— 9
- (a) if there is a reasonably practicable way of immediately 10
giving a copy of the warrant to the inspector, including, 11
for example, by sending a copy by fax or email, the 12
magistrate must immediately give a copy of the warrant 13
to the inspector; or 14
- (b) otherwise— 15
- (i) the magistrate must tell the inspector the 16
information mentioned in section 569(2); and 17
- (ii) the inspector must complete a form of warrant, 18
including by writing on it the information 19
mentioned in section 569(2) provided by the 20
magistrate. 21
- (3) The copy of the warrant mentioned in subsection (2)(a), or the 22
form of warrant completed under subsection (2)(b) (in either 23
case the *duplicate warrant*), is a duplicate of, and as effectual 24
as, the original warrant. 25
- (4) The inspector must, at the first reasonable opportunity, send to 26
the magistrate— 27
- (a) the written application complying with section 568(2) 28
and (3); and 29
- (b) if the inspector completed a form of warrant under 30
subsection (2)(b), the completed form of warrant. 31
- (5) The magistrate must keep the original warrant and, on 32
receiving the documents under subsection (4)— 33
-

[s 572]

(a)	attach the documents to the original warrant; and	1
(b)	give the original warrant and documents to the clerk of the court of the relevant magistrates court.	2 3
(6)	Despite subsection (3), if—	4
(a)	an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and	5 6 7
(b)	the original warrant is not produced in evidence;	8
	the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.	9 10 11
(7)	In this section—	12
	<i>relevant magistrates court</i> , in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the <i>Magistrates Act 1991</i> .	13 14 15
572	Defect in relation to a warrant	16
(1)	A warrant is not invalidated by a defect in—	17
(a)	the warrant; or	18
(b)	compliance with this subdivision;	19
	unless the defect affects the substance of the warrant in a material particular.	20 21
(2)	In this section—	22
	<i>warrant</i> includes a duplicate warrant mentioned in section 571(3).	23 24

Subdivision 2	Entry procedure	1
573	Entry procedure	2
(1)	This section applies if an inspector is intending to enter a place under a warrant issued under subdivision 1.	3 4
(2)	Before entering the place, the inspector must do or make a reasonable attempt to do the following things—	5 6
(a)	identify himself or herself to a person who is an occupier of the place and is present by producing the inspector’s identity card or another document evidencing the inspector’s appointment;	7 8 9 10
(b)	give the person a copy of the warrant;	11
(c)	tell the person the inspector is permitted by the warrant to enter the place;	12 13
(d)	give the person an opportunity to allow the inspector immediate entry to the place without using force.	14 15
(3)	However, the inspector need not comply with subsection (2) if the inspector believes on reasonable grounds that entry to the place without compliance is required to ensure the execution of the warrant is not frustrated.	16 17 18 19
(4)	In this section— <i>warrant</i> includes a duplicate warrant mentioned in section 571(3).	20 21 22

[s 574]

Part 4	General powers of inspectors after entering places	1 2
574	Application of pt 4	3
(1)	The powers under this part may be exercised if an inspector enters a place under section 563(1)(a), (c) or (d).	4 5
(2)	However, if the inspector enters the place under section 563(1)(a) or (c), the powers under this part are subject to any conditions of the consent or terms of the warrant.	6 7 8
575	General powers	9
(1)	The inspector may do any of the following (each a <i>general power</i>)—	10 11
(a)	search any part of the place;	12
(b)	confer alone with a patient in the place;	13
(c)	make inquiries about the admission, assessment, examination, detention, or treatment and care, of a patient in the place;	14 15 16
(d)	inspect, examine or film any part of the place or anything at the place, including, for example—	17 18
(i)	inspect any document (including a health record) about a patient who—	19 20
(A)	has been, or is being, assessed or examined in the place; or	21 22
(B)	has received, or is receiving, treatment and care in the place; and	23 24
(ii)	inspect any record or register required to be kept under this Act;	25 26
(e)	take for examination a thing, or a sample of or from a thing, at the place;	27 28
(f)	place an identifying mark in or on anything at the place;	29

-
- (g) take an extract from, or copy, a document at the place, or
take the document to another place to copy; 1
2
- (h) produce an image or writing at the place from an
electronic document or, to the extent it is not
practicable, take a thing containing an electronic
document to another place to produce an image or
writing; 3
4
5
6
7
- (i) take to, into or onto the place and use any person,
equipment and materials the inspector reasonably
requires for exercising the inspector's powers under this
part; 8
9
10
11
- (j) remain at the place for the time necessary to achieve the
purpose of the entry. 12
13
- (2) The inspector may take a necessary step to allow the exercise
of a general power. 14
15
- (3) If the inspector takes a document from the place to copy it, the
inspector must copy the document and return it to the place as
soon as practicable. 16
17
18
- (4) If the inspector takes from the place an article or device
reasonably capable of producing a document from an
electronic document to produce the document, the inspector
must produce the document and return the article or device to
the place as soon as practicable. 19
20
21
22
23
- (5) In this section— 24
- examine* includes analyse, test, account, measure, weigh,
grade, gauge and identify. 25
26
- film* includes photograph, videotape and record an image in
another way. 27
28
- inspect*, a thing, includes open the thing and examine its
contents. 29
30

[s 576]

576	Power to require reasonable help	1
(1)	The inspector may make a requirement (a <i>help requirement</i>) of an occupier of the place or a person at the place to give the inspector reasonable help to exercise a general power, including, for example, to produce a document or to give information.	2 3 4 5 6
(2)	When making the help requirement, the inspector must give the person an offence warning for the requirement.	7 8
577	Offence to contravene help requirement	9
(1)	A person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse. Maximum penalty—100 penalty units.	10 11 12 13
(2)	It is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty.	14 15 16
(3)	However, subsection (2) does not apply if a document or information the subject of the help requirement is required to be held or kept under this Act.	17 18 19
Part 5	Seizure by inspectors and forfeiture	20 21
Division 1	Power to seize	22
578	Seizing evidence at a place that may be entered without consent or warrant	23 24
	An inspector who enters a place the inspector may enter under section 563 without the consent of an occupier of the place	25 26

and without a warrant may seize a thing at the place if the inspector reasonably believes the thing is evidence—	1 2
(a) about a matter being investigated by the inspector under chapter 10, part 4; or	3 4
(b) of an offence against this Act.	5
579 Seizing evidence at a place that may be entered only with consent or warrant	6 7
(1) This section applies if—	8
(a) an inspector is authorised to enter a place only with the consent of an occupier of the place or a warrant; and	9 10
(b) the inspector enters the place after obtaining the consent or under a warrant.	11 12
(2) If the inspector enters the place with the occupier’s consent, the inspector may seize a thing at the place only if—	13 14
(a) the inspector reasonably believes the thing is evidence—	15
(i) about a matter being investigated by the inspector under chapter 10, part 4; or	16 17
(ii) of an offence against this Act; and	18
(b) seizure of the thing is consistent with the purpose of entry as explained to the occupier when asking for the occupier’s consent.	19 20 21
(3) If the inspector enters the place under a warrant, the inspector may seize the evidence for which the warrant was issued.	22 23
(4) The inspector may also seize anything else at the place if the inspector reasonably believes—	24 25
(a) the thing is evidence—	26
(i) about a matter being investigated by the inspector under chapter 10, part 4; or	27 28
(ii) of an offence against this Act; and	29

[s 580]

(b)	the seizure is necessary to prevent the thing being hidden, lost or destroyed.	1 2
(5)	The inspector may also seize a thing at the place if the inspector reasonably believes it has just been used in committing an offence against this Act.	3 4 5
580	Seizure of property subject to security	6
(1)	An inspector may seize a thing, and exercise powers relating to the thing, despite a lien or other security over the thing claimed by another person.	7 8 9
(2)	However, the seizure does not affect the other person's claim to the lien or other security against a person other than the inspector or a person acting under the direction or authority of the inspector.	10 11 12 13
Division 2	Powers to support seizure	14
581	Power to secure seized thing	15
(1)	Having seized a thing under division 1, an inspector may—	16
(a)	leave it at the place where it was seized (the <i>place of seizure</i>) and take reasonable action to restrict access to it; or	17 18 19
(b)	move it from the place of seizure.	20
(2)	For subsection (1)(a), the inspector may, for example—	21
(a)	seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or	22 23 24
(b)	for equipment—make it inoperable; or	25
	<i>Example—</i>	26
	make it inoperable by dismantling it or removing a component without which the equipment can not be used	27 28

(c)	require a person the inspector reasonably believes is in control of the place or thing to do an act mentioned in paragraph (a) or (b) or anything else an inspector could do under subsection (1)(a).	1 2 3 4
582	Offence to contravene other seizure requirement	5
	A person must comply with a requirement made of the person under section 581(2)(c) unless the person has a reasonable excuse.	6 7 8
	Maximum penalty—100 penalty units.	9
583	Offence to interfere	10
(1)	If access to a seized thing is restricted under section 581, a person must not tamper with the thing or with anything used to restrict access to the thing without—	11 12 13
(a)	an inspector’s approval; or	14
(b)	a reasonable excuse.	15
	Maximum penalty—100 penalty units.	16
(2)	If access to a place is restricted under section 581, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without—	17 18 19 20
(a)	an inspector’s approval; or	21
(b)	a reasonable excuse.	22
	Maximum penalty—100 penalty units.	23
Division 3	Safeguards for seized things	24
584	Receipt and information notice for seized thing	25
(1)	This section applies if an inspector seizes anything under division 1 unless—	26 27

[s 585]

- (a) the inspector reasonably believes there is no-one apparently in possession of the thing or it has been abandoned; or
 - (b) because of the condition, nature and value of the thing it would be unreasonable to require the inspector to comply with this section.
- (2) The inspector must, as soon as practicable after seizing the thing, give an owner or person in control of the thing before it was seized—
- (a) a receipt for the thing that generally describes the thing and its condition; and
 - (b) an information notice about the decision to seize it.
- (3) However, if an owner or person from whom the thing is seized is not present when it is seized, the receipt and information notice may be given by leaving them in a conspicuous position and in a reasonably secure way at the place at which the thing is seized.
- (4) The receipt and information notice may—
- (a) be given in the same document; and
 - (b) relate to more than 1 seized thing.
- (5) The inspector may delay giving the receipt and information notice if the inspector reasonably suspects giving them may frustrate or otherwise hinder an investigation by the inspector under this Act.
- (6) However, the delay may be only for so long as the inspector continues to have the reasonable suspicion and remains in the vicinity of the place at which the thing was seized to keep it under observation.

585 Access to seized thing

- (1) Until a seized thing is forfeited or returned, the inspector who seized the thing must allow an owner of the thing—

-
- (a) to inspect it at any reasonable time and from time to time; and 1
2
 - (b) if it is a document—to copy it. 3
 - (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying. 4
5
 - (3) The inspection or copying must be allowed free of charge. 6
- 586 Return of seized thing** 7
- (1) This section applies if a seized thing has some intrinsic value and is not forfeited or transferred under division 4 or 5. 8
9
 - (2) The inspector must return the seized thing to an owner— 10
 - (a) generally—at the end of 6 months after the seizure; or 11
 - (b) if a proceeding for an offence involving the thing is started within 6 months after the seizure—at the end of the proceeding and any appeal from the proceeding. 12
13
14
 - (3) Despite subsection (2), if the thing was seized as evidence, the inspector must return the thing seized to an owner as soon as practicable after the inspector is satisfied— 15
16
17
 - (a) its continued retention as evidence is no longer necessary; and 18
19
 - (b) it is lawful for the owner to possess it. 20
 - (4) Nothing in this section affects a lien or other security over the seized thing. 21
22

Division 4 Forfeiture 23

587 Forfeiture by chief psychiatrist decision 24

- (1) The chief psychiatrist may decide a seized thing is forfeited to the State if an inspector— 25
26

[s 588]

- (a) after making reasonable inquiries, can not find an owner; or 1
2
- (b) after making reasonable efforts, can not return it to an owner. 3
4
- (2) However, the inspector is not required to— 5
 - (a) make inquiries if it would be unreasonable to make inquiries to find an owner; or 6
7
 - (b) make efforts if it would be unreasonable to make efforts to return the thing to an owner. 8
9

Example for paragraph (b)— 10

the owner of the thing has migrated to another country 11
- (3) Regard must be had to the thing's condition, nature and value in deciding— 12
13
 - (a) whether it is reasonable to make inquiries or efforts; and 14
 - (b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable. 15
16
17

588 Information notice about forfeiture decision 18

- (1) If the chief psychiatrist decides under section 587(1) to forfeit a thing, the chief psychiatrist must as soon as practicable give a person who owned the thing immediately before the forfeiture (the *former owner*) an information notice about the decision. 19
20
21
22
23
- (2) The information notice may be given by leaving it at the place where the thing was seized, in a conspicuous position and in a reasonably secure way. 24
25
26
- (3) The information notice must state that the former owner may apply for a stay of the decision if the former owner appeals against the decision. 27
28
29
- (4) However, subsections (1) to (3) do not apply if the place where the thing was seized is— 30
31

(a)	a public place; or	1
(b)	a place where the notice is unlikely to be read by the former owner.	2 3
589	Forfeiture on conviction	4
(1)	On the conviction of a person for an offence against this Act, the court may order the forfeiture to the State of—	5 6
(a)	anything used to commit the offence; or	7
(b)	anything else the subject of the offence.	8
(2)	The court may make the order—	9
(a)	whether or not the thing has been seized; or	10
(b)	if the thing has been seized—whether or not the thing has been returned to the former owner of the thing.	11 12
(3)	The court may make any order to enforce the forfeiture it considers appropriate.	13 14
(4)	This section does not limit the court’s powers under another law.	15 16
590	Procedure and powers for making forfeiture order	17
(1)	A forfeiture order may be made on a conviction on the court’s initiative or on an application by the prosecution.	18 19
(2)	In deciding whether to make a forfeiture order for a thing, the court—	20 21
(a)	may require notice to be given to anyone the court considers appropriate, including, for example, any person who may have any property in the thing; and	22 23 24
(b)	must hear any submissions that any person claiming to have any property in the thing may wish to make.	25 26

[s 591]

Division 5	Dealing with property forfeited or transferred to State	1 2
591	When thing becomes property of the State	3
	A thing becomes the property of the State if—	4
	(a) the thing is forfeited to the State under section 587(1) or 589(1); or	5 6
	(b) the owner of the thing and the State agree, in writing, to the transfer of the ownership of the thing to the State.	7 8
592	How property may be dealt with	9
(1)	This section applies if, under section 591, a thing becomes the property of the State.	10 11
(2)	The chief psychiatrist may deal with the thing as the chief psychiatrist considers appropriate, including, for example, by destroying it or giving it away.	12 13 14
(3)	The chief psychiatrist must not deal with the thing in a way that could prejudice the outcome of an appeal against the forfeiture under part 8.	15 16 17
(4)	If the chief psychiatrist sells the thing, the chief psychiatrist may, after deducting the costs of the sale, return the proceeds of the sale to the former owner of the thing.	18 19 20
Part 6	Other information-obtaining powers of inspectors	21 22
593	Power to require name and address	23
(1)	This section applies if an inspector—	24
	(a) finds a person committing an offence against this Act; or	25

(b)	finds a person in circumstances that lead the inspector to reasonably suspect the person has just committed an offence against this Act; or	1 2 3
(c)	has information that leads the inspector to reasonably suspect a person has just committed an offence against this Act.	4 5 6
(2)	The inspector may require the person to state the person's name and residential address.	7 8
(3)	The inspector may also require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to—	9 10 11 12
(a)	be in possession of evidence of the correctness of the stated name or address; or	13 14
(b)	otherwise be able to give the evidence.	15
(4)	When making a personal details requirement, the inspector must give the person an offence warning for the requirement.	16 17
(5)	A requirement under this section is a <i>personal details requirement</i> .	18 19
594	Offence to contravene personal details requirement	20
(1)	A person of whom a personal details requirement has been made must comply with the requirement unless the person has a reasonable excuse.	21 22 23
	Maximum penalty—50 penalty units.	24
(2)	A person may not be convicted of an offence under subsection (1) unless the person is found guilty of the offence in relation to which the personal details requirement was made.	25 26 27
595	Power to require information	28
(1)	This section applies if an inspector reasonably believes—	29

[s 596]

- (a) an offence against this Act has been committed and a person may be able to give information about the offence; or
- (b) a person may be able to give information about a matter being investigated by the inspector under chapter 10, part 4.
- (2) The inspector may, by written notice given to the person, require the person to give the inspector information related to the offence, or matter being investigated, at a stated reasonable time and place.
- (3) A requirement under subsection (2) is an *information requirement*.
- (4) For information that is an electronic document, compliance with the information requirement requires the giving of a clear image or written version of the electronic document.
- (5) In this section—
information includes a document.
- 596 Offence to contravene information requirement**
- (1) A person of whom an information requirement is made must comply with the requirement unless the person has a reasonable excuse.
Maximum penalty—50 penalty units.
- (2) It is a reasonable excuse for an individual not to give the information if giving the information might tend to incriminate the individual or expose the individual to a penalty.
- (3) However, subsection (2) does not apply if information the subject of the information requirement is required to be held or kept under this Act.
- (4) In this section—
information includes a document.

Part 7	Miscellaneous provisions relating to inspectors	1 2
Division 1	Damage	3
597	Duty to avoid inconvenience and minimise damage	4
	In exercising a power, an inspector must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.	5 6 7
598	Notice of damage	8
(1)	This section applies if—	9
(a)	an inspector damages something when exercising, or purporting to exercise, a power; or	10 11
(b)	a person (the <i>assistant</i>) acting under the direction or authority of an inspector damages something.	12 13
(2)	However, this section does not apply to damage the inspector reasonably considers is trivial or if the inspector reasonably believes—	14 15 16
(a)	there is no-one apparently in possession of the thing; or	17
(b)	the thing has been abandoned.	18
(3)	The inspector must give written notice of the damage to the person who appears to the inspector to be an owner, or person in control, of the thing.	19 20 21
(4)	However, if for any reason it is not practicable to comply with subsection (3), the inspector must—	22 23
(a)	leave the notice at the place where the damage happened; and	24 25
(b)	ensure it is left in a conspicuous position and in a reasonably secure way.	26 27

[s 599]

- (5) The inspector may delay complying with subsection (3) or (4) if the inspector reasonably suspects complying with the subsection may frustrate or otherwise hinder the performance of the inspector's functions. 1
2
3
4
- (6) The delay may be only for so long as the inspector continues to have the reasonable suspicion and remains in the vicinity of the place. 5
6
7
- (7) If the inspector believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the inspector or the assistant, the inspector may state the belief in the notice. 8
9
10
11
- (8) The notice must state— 12
- (a) particulars of the damage; and 13
 - (b) that the person who suffered the damage may claim compensation under section 599. 14
15

Division 2 Compensation 16

599 Claim 17

- (1) A person may claim compensation from the State if the person incurs loss because of the exercise, or purported exercise, of a power by or for an inspector including a loss arising from compliance with a requirement made of the person under part 5 or 6. 18
19
20
21
22
- (2) The compensation may be claimed and ordered in a proceeding— 23
24
- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or 25
26
 - (b) for an alleged offence against this Act the investigation of which gave rise to the claim for compensation. 27
28
- (3) In this section— 29
- loss* includes costs and damage. 30

600	Court order	1
(1)	A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.	2 3 4
(2)	In considering whether it is just to order compensation, the court must have regard to—	5 6
(a)	any relevant offence committed by the claimant; and	7
(b)	whether the loss arose from a lawful seizure or lawful forfeiture.	8 9
(3)	A regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.	10 11 12
(4)	Section 597 does not provide for a statutory right of compensation other than as provided by this section.	13 14
Part 8	Reviews and appeals about seizure and forfeiture	15 16
601	Definitions for pt 8	17
	In this part—	18
	<i>internal review decision</i> see section 606(1)(b).	19
	<i>original decision</i> see section 606(1)(a).	20
	<i>review notice</i> see section 606(1)(c).	21
	<i>review notice day</i> see section 606(2)(a).	22
602	Right of appeal	23
	A person who has a right to be given an information notice about a decision made under this chapter has a right to appeal against the decision.	24 25 26

[s 603]

<i>Note—</i>	1
Information notices are given under sections 584 and 588.	2
603 Appeal process starts with internal review	3
(1) Every appeal against a decision must be, in the first instance, by way of an application for internal review.	4 5
(2) A person who has a right to appeal against a decision may apply to the chief executive for internal review of the decision.	6 7
604 How to apply for internal review	8
(1) An application for internal review of a decision must—	9
(a) be in the approved form; and	10
(b) include enough information to enable the chief executive to decide the application.	11 12
(2) The application must be made within 28 days after—	13
(a) the day the person is given an information notice about the decision; or	14 15
(b) if the person is not given an information notice about the decision—the day the person otherwise becomes aware of the decision.	16 17 18
(3) The chief executive may, at any time, extend the time for making the application.	19 20
(4) The application must not be dealt with by—	21
(a) the person who made the decision; or	22
(b) a person in a less senior office than the person who made the decision.	23 24
(5) Subsection (4) applies despite the <i>Acts Interpretation Act 1954</i> , section 27A.	25 26

605	Stay of operation of decision	1
(1)	The making of an application for internal review of a decision does not affect the operation of the decision or prevent it being implemented.	2 3 4
(2)	However, the applicant may apply to the court for a stay of the decision.	5 6
(3)	The court may stay the decision to secure the effectiveness of the internal review and a later appeal to the court.	7 8
(4)	The stay—	9
(a)	may be given on conditions the court considers appropriate; and	10 11
(b)	operates for the period decided by the court.	12
(5)	The period of the stay must not extend past the day when the chief executive decides the application for internal review and any later period the court allows the applicant to enable the applicant to appeal against the internal review decision.	13 14 15 16
606	Internal review decision	17
(1)	The chief executive must, within 28 days after receiving an application for review of a decision—	18 19
(a)	review the decision (the <i>original decision</i>); and	20
(b)	make a decision (the <i>internal review decision</i>) to—	21
(i)	confirm the original decision; or	22
(ii)	amend the original decision; or	23
(iii)	substitute another decision for the original decision; and	24 25
(c)	give the applicant written notice (the <i>review notice</i>) of the internal review decision.	26 27
(2)	If the internal review decision is not the decision sought by the applicant, the review notice must state the following—	28 29

[s 607]

- (a) the day the notice is given to the applicant (the *review notice day*); 1
2
 - (b) the reasons for the decision; 3
 - (c) that the applicant may appeal against the decision to the 4
court within 28 days after the review notice day; 5
 - (d) how to appeal; 6
 - (e) that the applicant may apply to the court for a stay of the 7
decision. 8
- (3) If the chief executive does not give the review notice within 9
the 28 days, the chief executive is taken to have made an 10
internal review decision confirming the original decision. 11

607 Who may appeal 12

A person who has applied for internal review of an original 13
decision and is dissatisfied with the internal review decision 14
may appeal to the court against the decision. 15

608 Procedure for an appeal to the court 16

- (1) An appeal to the court is started by filing a notice of appeal 17
with the registrar of the court. 18
- (2) The notice of appeal must be filed within 28 days after— 19
 - (a) if the applicant is given a review notice—the review 20
notice day; or 21
 - (b) otherwise—the day the chief executive is taken to have 22
made an internal review decision confirming the original 23
decision. 24
- (3) The court may, at any time, extend the period for filing the 25
notice of appeal. 26
- (4) The notice of appeal must state fully the grounds of the 27
appeal. 28
- (5) A copy of the notice must be served on the chief executive. 29

609	Stay of operation of internal review decision	1
(1)	An appeal against an internal review decision does not affect the operation of the decision or prevent the decision being implemented.	2 3 4
(2)	However, the appellant may apply to the court for a stay of the internal review decision.	5 6
(3)	The court may stay the internal review decision to secure the effectiveness of the appeal.	7 8
(4)	The stay—	9
(a)	may be given on conditions the court considers appropriate; and	10 11
(b)	operates for the period decided by the court.	12
(5)	The period of the stay must not extend past the day when the court decides the appeal.	13 14
610	Powers of court on appeal	15
(1)	In deciding an appeal against an internal review decision, the court—	16 17
(a)	has the same powers as the chief executive for making the internal review decision; and	18 19
(b)	is not bound by the rules of evidence; and	20
(c)	must comply with natural justice.	21
(2)	An appeal is by way of rehearing.	22
(3)	The court may—	23
(a)	confirm the internal review decision; or	24
(b)	set aside the internal review decision and substitute another decision; or	25 26
(c)	set aside the internal review decision and return the matter to the chief executive with directions the court considers appropriate.	27 28 29

[s 611]

611	Effect of decision of court on appeal	1
(1)	If the court sets aside the internal review decision and returns the matter to the chief executive with directions the court considers appropriate, and the chief executive makes a new decision, the new decision is not subject to internal review or appeal under this part.	2 3 4 5 6
(2)	If the court substitutes another decision—	7
(a)	the substituted decision is taken to be the decision of the chief executive; and	8 9
(b)	the chief executive may give effect to the decision as if—	10 11
(i)	the decision were the original decision of the chief executive; and	12 13
(ii)	no application for internal review or appeal had been made.	14 15
Chapter 15	Suspension of criminal proceedings, offences and other legal matters	16 17 18
Part 1	Preliminary	19
612	Purpose of ch 15	20
	The purpose of this chapter is to provide for—	21
(a)	matters relating to the suspension of criminal proceedings against a person who becomes subject to this Act; and	22 23 24
(b)	offences relating to patients; and	25

-
- (c) offences relating to officials; and1
 - (d) the detention of, and use of reasonable force in relation to, particular patients; and2
3
 - (e) matters relating to evidence and legal proceedings.4

Part 2**Suspension of criminal proceedings**5 6

613 Purpose of pt 2 7

- (1) The purpose of this part is to provide for—8
- (a) the suspension of criminal proceedings against a person—9
10
- (i) who becomes a classified patient; or11
- (ii) in relation to whom a direction is given under chapter 4 for a psychiatrist report to be prepared; or12
13
- (iii) in relation to whom a reference is made to the Mental Health Court; and14
15
- (b) the ending of the suspension of the criminal proceedings; and16
17
- (c) the giving of notices in relation to the suspension, and the ending of the suspension, of the criminal proceedings.18
19
20

614 Suspension of proceedings 21

- (1) This section applies if any of the following happens—22
- (a) a person charged with an offence, other than an offence against a law of the Commonwealth, becomes a classified patient;23
24
25

[s 615]

<i>Note—</i>	1
A person becomes a classified patient if the person is transported to, or remains in, an inpatient unit of an authorised mental health service under chapter 3, part 2 or 3.	2 3 4
(b) the chief psychiatrist gives a direction under section 91 or 93 for a psychiatrist report to be prepared about a person in relation to a charge of a serious offence or an associated offence;	5 6 7 8
(c) a person’s mental state in relation to an offence is referred to the Mental Health Court under section 101, 110, 175 or 183.	9 10 11
(2) A proceeding against a person mentioned in subsection (1)(a) for the offence is suspended.	12 13
(3) A proceeding against a person mentioned in subsection (1)(b) for the serious offence or associated offence to which the chief psychiatrist’s direction relates is suspended.	14 15 16
(4) A proceeding against a person mentioned in subsection (1)(c) for the offence to which the reference relates is suspended.	17 18
(5) If more than 1 of the events happens in relation to a proceeding against a person, the proceeding is suspended on and from the happening of the earliest of the events.	19 20 21
615 Giving notice of particular suspensions	22
(1) This section applies if a proceeding is suspended under section 614(2) or (3).	23 24
(2) As soon as practicable after the proceeding is suspended, the chief psychiatrist must give written notice to the chief executive (justice) of the suspension.	25 26 27
(3) As soon as practicable after receiving a notice under subsection (2), the chief executive (justice) must give each of the following a copy of the notice—	28 29 30
(a) the registrar of the court in which the proceeding for the offence has been brought;	31 32

(b)	the prosecuting authority for the offence;	1
(c)	if the person is a child within the meaning of the <i>Youth Justice Act 1992</i> —the chief executive (youth justice).	2 3
616	Ending of suspension	4
(1)	This section applies to a proceeding against a person that is suspended under section 614.	5 6
(2)	The suspension of the proceeding ends only if each of the following is satisfied—	7 8
(a)	the person is not, or is no longer, a classified patient;	9
(b)	if the chief psychiatrist has decided not to make a reference under section 101 to the Mental Health Court—the period mentioned in section 101(3), or any extended period mentioned in section 101(5), in which the chief psychiatrist may make the reference has ended;	10 11 12 13 14
(c)	if the person’s mental state in relation to the offence has been referred to the Mental Health Court under section 101, 110, 175 or 183—the Mental Health Court has made a decision on the reference or the reference has been withdrawn.	15 16 17 18 19
617	Giving notice of ending of suspension	20
(1)	As soon as practicable after the ending of the suspension of a proceeding under section 614, the chief psychiatrist must give each of the following written notice of the ending of the suspension—	21 22 23 24
(a)	the person;	25
(b)	the person’s lawyer, if any;	26
(c)	the chief executive (justice);	27
(d)	if an authorised mental health service is responsible for the person—the administrator of the service;	28 29

[s 618]

(e)	if the forensic disability service is responsible for the person—the administrator of the service.	1 2
(2)	As soon as practicable after receiving a notice under subsection (1), the chief executive (justice) must give each of the following a copy of the notice—	3 4 5
(a)	the registrar of the court in which the proceeding for the offence has been brought;	6 7
(b)	the prosecuting authority for the offence;	8
(c)	if the person is a child within the meaning of the <i>Youth Justice Act 1992</i> —the chief executive (youth justice).	9 10
(3)	The registrar of the court in which the proceeding for the offence has been brought must arrange for the charge for the offence to be brought before the court within 7 days after receiving a copy of the notice under subsection (2) or, if the court can not be constituted in that period, at the earliest opportunity after the end of the period.	11 12 13 14 15 16
618	Effect on powers relating to bail, discontinuance of proceedings and other matters	17 18
	The suspension, under this part, of a proceeding against a person for an offence does not prevent—	19 20
(a)	a court making an order granting the person bail, or enlarging, varying or revoking bail granted to the person, under the <i>Bail Act 1980</i> ; or	21 22 23
(b)	a court remanding the person in custody in relation to the proceeding for the offence; or	24 25
(c)	a court adjourning the proceeding against the person for the offence until a stated date; or	26 27
(d)	the prosecution of the person for the offence being discontinued at any time; or	28 29
(e)	the presentation of an indictment under the Criminal Code, section 590 for the person.	30 31

Part 3	Offences relating to patients	1
619	Offence relating to ill-treatment	2
(1)	This section applies to a person who, under this Act—	3
(a)	is assessing, examining, providing treatment and care to, or detaining, a person (the <i>patient</i>); or	4 5
(b)	is responsible for the detention of a person (also the <i>patient</i>).	6 7
(2)	The person must not ill-treat the patient.	8
	Maximum penalty—200 penalty units or 2 years imprisonment.	9 10
(3)	In this section—	11
	<i>ill-treat</i> includes to wilfully abuse, neglect or exploit.	12
620	Offences relating to patients absconding	13
(1)	This section applies if a person is—	14
(a)	transporting a person (the <i>patient</i>) under this Act—	15
(i)	to an authorised mental health service; or	16
(ii)	to the forensic disability service; or	17
(iii)	to appear before a court; or	18
(iv)	to a place of custody; or	19
(b)	accompanying a classified patient, forensic patient or person subject to a judicial order (also the <i>patient</i>) while the patient is receiving limited community treatment or on a temporary absence under section 221.	20 21 22 23
(2)	For this section, while the person is acting as mentioned in subsection (1), the patient is in the person's charge.	24 25
(3)	The person must not wilfully allow the patient to abscond from the person's charge.	26 27

[s 621]

Maximum penalty—200 penalty units or 2 years imprisonment.	1 2
(4) A person must not knowingly help the patient to abscond from the person’s charge.	3 4
Maximum penalty—200 penalty units or 2 years imprisonment.	5 6
621 Offences relating to patients unlawfully absent	7
(1) A person must not—	8
(a) induce, or knowingly help, a patient of an authorised mental health service or public sector health service facility to unlawfully absent himself or herself from the service or facility; or	9 10 11 12
(b) knowingly harbour a patient who is unlawfully absent from an authorised mental health service or public sector health service facility.	13 14 15
Maximum penalty—	16
(a) for a classified patient, forensic patient or a person subject to a judicial order—200 penalty units or 2 years imprisonment; or	17 18 19
(b) otherwise—200 penalty units.	20
(2) Without limiting subsection (1)(b), a patient mentioned in section 620(1) is unlawfully absent from an authorised mental health service or public sector health service facility if the patient has absconded from the charge of a person mentioned in section 620(2).	21 22 23 24 25
(3) A person employed in an authorised mental health service or public sector health service facility must not wilfully allow a patient detained in the service or facility to unlawfully absent himself or herself from the service or facility.	26 27 28 29
Maximum penalty—	30

-
- (a) for a classified patient, forensic patient or a person subject to a judicial order—200 penalty units or 2 years imprisonment; or
- (b) otherwise—200 penalty units.
- (4) In this section—
unlawfully means without authority under this Act or other legal authority, justification or excuse.

Part 4 Offences relating to officials

- 622 Definition for pt 4**
- In this part—
official means the following persons—
- (a) the chief psychiatrist;
- (b) the administrator of an authorised mental health service;
- (c) an authorised person other than a police officer;
- (d) an inspector.
- 623 Obstructing official**
- (1) A person must not obstruct an official exercising a power, or someone helping an official exercising a power, unless the person has a reasonable excuse.
Maximum penalty—100 penalty units.
- (2) If a person has obstructed an official, or someone helping an official, and the official decides to proceed with the exercise of the power, the official must warn the person that—
- (a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and

[s 624]

(b) the official considers the person’s conduct an obstruction.	1 2
(3) However, a person who is a patient does not commit an offence against subsection (1) merely because the person resists the exercise of the power in relation to himself or herself.	3 4 5 6
(4) In this section— <i>obstruct</i> includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.	7 8 9
624 Impersonating official	10
A person must not impersonate an official.	11
Maximum penalty—100 penalty units.	12
625 Giving official false or misleading information	13
(1) A person must not, in relation to the administration of this Act, give an official information, or a document containing information, that the person knows is false or misleading in a material particular.	14 15 16 17
Maximum penalty—100 penalty units.	18
(2) Subsection (1) applies to information or a document given in relation to the administration of this Act whether or not the information or document was given in response to a specific power under this Act.	19 20 21 22

Part 5	Detention and use of reasonable force	1 2
626	Classified patient (voluntary) may be detained	3
	A classified patient (voluntary) may be detained in an authorised mental health service for treatment and care for the person's mental illness.	4 5 6
627	Detention of person in authorised mental health service with use of reasonable force	7 8
(1)	This section applies if, under a provision of this Act, a person is required or permitted to be detained in an authorised mental health service.	9 10 11
(2)	The administrator of the authorised mental health service, and anyone lawfully helping the administrator, may exercise the power to detain the person in the service with the help, and using the force, that is necessary and reasonable in the circumstances.	12 13 14 15 16
628	Detention of person in public sector health service facility with use of reasonable force	17 18
(1)	This section applies if, under a provision of this Act, a person is required or permitted to be detained in a public sector health service facility, other than an authorised mental health service.	19 20 21 22
(2)	The person in charge of the public sector health service facility, and anyone lawfully helping the person in charge, may exercise the power to detain the person in the public sector health service facility with the help, and using the force, that is necessary and reasonable in the circumstances.	23 24 25 26 27

[s 629]

629	Examination or assessment of involuntary patient without consent and with use of reasonable force	1 2
(1)	This section applies to an involuntary patient.	3
(2)	Subject to this Act, an examination or assessment of the patient may be made under this Act without the consent of the patient or anyone else.	4 5 6
(3)	A person lawfully making, or lawfully helping to make, an examination or assessment of the patient in an authorised mental health service or public sector health service facility may use the force that is necessary and reasonable in the circumstances to make, or help make, the examination or assessment.	7 8 9 10 11 12
	<i>Notes—</i>	13
1	See section 33 for the use of force in relation to a person subject to an examination authority.	14 15
2	See the <i>Guardianship and Administration Act 2000</i> , sections 63 and 75 for carrying out urgent health care and the use of force to carry out health care authorised under that Act.	16 17 18
630	Treatment and care of patient without consent and with use of reasonable force	19 20
(1)	This section applies to the following (each a <i>patient</i>)—	21
(a)	an involuntary patient subject to a treatment authority, forensic order or treatment support order;	22 23
(b)	a person from another State detained in an authorised mental health service under section 366(4).	24 25
(2)	Subject to this Act, treatment and care for the patient’s mental illness may be provided to the patient under this Act without the consent of the patient or anyone else.	26 27 28
(3)	A person lawfully providing, or lawfully helping to provide, treatment and care to the patient in an authorised mental health service or public sector health service facility may use the force that is necessary and reasonable in the circumstances to provide, or help provide, the treatment and care.	29 30 31 32 33

- (4) To remove any doubt, it is declared that this section does not authorise the provision of treatment and care to an involuntary patient that is inconsistent with this Act. 1
2
3

Example of treatment and care that is inconsistent with this Act— 4

a doctor performing electroconvulsive therapy on a person other than under section 235 or 236. 5
6

631 Relationship with use of physical restraint 7

This part is subject to section 269. 8

Part 6 Evidence and legal proceedings 9
10

632 Evidentiary aids 11

(1) This section applies to a proceeding under this Act. 12

(2) The following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it— 13
14

(a) the chief psychiatrist's appointment; 15

(b) an appointment of the administrator of an authorised mental health service; 16
17

(c) an authorised doctor's appointment; 18

(d) an authorised mental health practitioner's appointment; 19

(e) an appointment under section 339 of a health practitioner to perform particular functions; 20
21

(f) an inspector's appointment; 22

(g) an authorised person's appointment; 23

(h) the authority of any of the following persons to do anything under this Act— 24
25

[s 632]

- | | | |
|--------|--|----------------------|
| (i) | the Minister; | 1 |
| (ii) | the chief psychiatrist; | 2 |
| (iii) | the administrator of an authorised mental health service; | 3
4 |
| (iv) | an authorised doctor; | 5 |
| (v) | an authorised mental health practitioner; | 6 |
| (vi) | a health practitioner appointed under section 339 to perform particular functions; | 7
8 |
| (vii) | an inspector; | 9 |
| (viii) | an authorised person. | 10 |
| (3) | A signature purporting to be the signature of any of the following persons is evidence of the signature it purports to be— | 11
12
13 |
| (a) | the Minister; | 14 |
| (b) | the chief psychiatrist; | 15 |
| (c) | the president; | 16 |
| (d) | the administrator of an authorised mental health service; | 17 |
| (e) | an authorised doctor; | 18 |
| (f) | an authorised mental health practitioner; | 19 |
| (g) | a health practitioner appointed under section 339 to perform particular functions; | 20
21 |
| (h) | an inspector; | 22 |
| (i) | an authorised person. | 23 |
| (4) | A certificate purporting to be signed by the chief psychiatrist and stating any of the following matters is evidence of the matter— | 24
25
26 |
| (a) | a stated document is a copy of a document made, given or issued under this Act, including, for example, an authority, order, notice, declaration, direction or decision; | 27
28
29
30 |

-
- (b) on a stated day, or during a stated period, a stated person was or was not an involuntary patient, a stated type of involuntary patient or a classified patient (voluntary);
 - (c) a stated place is, or was on a stated day or during a stated period, an authorised mental health service or stated type of authorised mental health service;
 - (d) on a stated day, a stated person was given or issued a stated document under this Act, including, for example, an authority, order, notice, declaration, direction or decision;
 - (e) on a stated day, a stated requirement was made of a stated person;
 - (f) a stated document is a copy of a part of a register kept under this Act.
- (5) A document purporting to be signed by a member or the executive officer of the tribunal and to be an order or decision, or copy of an order or decision, of the tribunal, is evidence of the order or decision.

633 Proceedings for offences

- (1) A proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886*.
- (2) The proceeding must start within the later of—
 - (a) 1 year after the offence is committed; or
 - (b) 1 year after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.

[s 634]

Chapter 16	Establishment and administration of court and tribunal	1 2 3
Part 1	Mental Health Court	4
Division 1	Preliminary	5
634	Purpose of pt 1	6
	The purpose of this part is to provide for the following—	7
	(a) the continuation of the Mental Health Court, as formerly established under the repealed <i>Mental Health Act 2000</i> ;	8 9
	(b) the constitution, jurisdiction and powers of the court;	10
	(c) procedural provisions for proceedings of the court;	11
	(d) the review of the detention of particular persons in an authorised mental health service or the forensic disability service.	12 13 14
Division 2	Continuation, constitution, jurisdiction and powers	15 16
635	Continuation of Mental Health Court	17
	(1) The Mental Health Court, as formerly established as a superior court of record by the repealed <i>Mental Health Act 2000</i> , section 381 is continued in existence.	18 19 20
	(2) The court has a seal that must be judicially noticed.	21
	(3) The court consists of the president and other members of the court.	22 23

636	Constitution	1
(1)	The Mental Health Court is constituted by a member of the court sitting alone.	2 3
(2)	In exercising jurisdiction under this Act, the court must be assisted by 1 or 2 assisting clinicians.	4 5
(3)	However, subsection (2) does not apply to—	6
(a)	a directions hearing; or	7
(b)	a hearing that is only about a question of law.	8
(4)	If the court is assisted by 2 assisting clinicians for a hearing, the assisting clinicians must be—	9 10
(a)	for a hearing other than a hearing relating to a person who has an intellectual disability—2 psychiatrists; or	11 12
(b)	for a hearing relating to a person who has an intellectual disability—	13 14
(i)	2 psychiatrists; or	15
(ii)	1 psychiatrist and 1 person with expertise in the care of persons who have an intellectual disability.	16 17
(5)	If the court is assisted by 1 assisting clinician for a hearing, the assisting clinician must be—	18 19
(a)	for a hearing other than a hearing relating to a person who has an intellectual disability—1 psychiatrist; or	20 21
(b)	for a hearing relating to a person who has an intellectual disability—	22 23
(i)	1 psychiatrist; or	24
(ii)	1 person with expertise in the care of persons who have an intellectual disability.	25 26
(6)	The president must decide, for a hearing other than a hearing mentioned in subsection (3)—	27 28
(a)	whether the court is to be assisted by 1 or 2 assisting clinicians, and the assisting clinicians who are to assist the court; or	29 30 31

[s 637]

- (b) if a hearing is adjourned under subsection (7)—whether the court is to be assisted by a second assisting clinician and, if so, the second assisting clinician who is to assist the court. 1
2
3
4
 - (7) If the court is assisted by 1 assisting clinician and the member constituting the court considers, because of the nature of the evidence or issues arising in the proceeding, that it would be beneficial for the court to be assisted by 2 assisting clinicians, the member may adjourn the hearing— 5
6
7
8
9
 - (a) if the member is the president—to decide the second assisting clinician for the hearing; or 10
11
 - (b) otherwise—to allow the president to decide whether the court should be assisted for the hearing by a second assisting clinician. 12
13
14
- 637 Jurisdiction** 15
- (1) The Mental Health Court has jurisdiction to hear and decide— 16
 - (a) references under chapter 5; and 17
 - (b) appeals under chapter 13, part 3; and 18
 - (c) reviews under division 9 of the detention of persons in authorised mental health services or the forensic disability service. 19
20
21
 - (2) In exercising its jurisdiction, the court— 22
 - (a) must inquire into the matter before it; and 23
 - (b) may inform itself in relation to the matter before it in any way it considers appropriate. 24
25
 - (3) The court’s jurisdiction is not limited, by implication, by a provision of this or another Act. 26
27
 - (4) A member of the court retains all of the member’s jurisdiction as a Supreme Court judge. 28
29

638	Powers	1
	Without limiting the powers conferred on it under this or another Act, the Mental Health Court may do all things necessary or convenient to be done for the exercise of its jurisdiction.	2 3 4 5
Division 3	Membership	6
639	Appointment of members	7
	(1) The Governor in Council may, by commission, appoint a Supreme Court judge to be a member of the Mental Health Court.	8 9 10
	(2) The judge is appointed for the term, of not more than 3 years, stated in the commission.	11 12
640	Appointment does not affect judge's tenure of office	13
	(1) The appointment of, or service by, the judge as a member of the Mental Health Court does not affect—	14 15
	(a) the person's tenure of office as a judge; or	16
	(b) the person's rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of the person's office as a judge.	17 18 19
	(2) The person's service as a member of the court is taken to be service as a Supreme Court judge for all purposes.	20 21
641	Resignation of office	22
	(1) The judge may resign as a member of the Mental Health Court by signed notice of resignation given to—	23 24
	(a) if the judge is the Chief Justice—the Governor; or	25
	(b) otherwise—the Chief Justice.	26

[s 642]

(2)	The notice takes effect when it is given under subsection (1) or, if a later time is stated in the notice, at the later time.	1 2
642	When member's office ends	3
(1)	The judge holds office as a member of the Mental Health Court until the earlier of the following days—	4 5
(a)	the day the person's appointment as a member of the court ends;	6 7
(b)	if the person resigns as a member of the court—the day the notice of resignation takes effect under section 641;	8 9
(c)	the day the person ceases to be a Supreme Court judge.	10
(2)	However, if the judge ceases to hold office as a member of the court while hearing a matter, the Governor in Council may, without reappointing the person as a member of the court, continue the person in office for the time necessary to enable the hearing to be completed.	11 12 13 14 15
(3)	The person continued in office may exercise the jurisdiction and powers of the court that are necessary or convenient for the hearing to be completed.	16 17 18
Division 4	President	19
643	Appointment of president	20
(1)	The Governor in Council is to appoint a member of the Mental Health Court to be the president.	21 22
(2)	A person may be appointed as the president at the same time the person is appointed as a member of the court.	23 24
644	Arrangement of business	25
(1)	The president is responsible for the administration of the Mental Health Court and for ensuring the orderly and	26 27

expeditious exercise of the jurisdiction and powers of the court.	1 2
(2) The president has power to do all things necessary or convenient to be done for the administration of the court and for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the court.	3 4 5 6
645 President holds office while member of court	7
The president holds office as the president while he or she is a member of the Mental Health Court.	8 9
646 Delegation of particular powers	10
The president may delegate, to another member of the Mental Health Court, the president's powers under section 636(6).	11 12
647 Resignation of office	13
(1) The president may resign as president by signed notice of resignation given to—	14 15
(a) if the president is the Chief Justice—the Governor; or	16
(b) otherwise—the Chief Justice.	17
(2) The notice takes effect when it is given under subsection (1) or, if a later time is stated in the notice, at the later time.	18 19
(3) Resignation as the president does not affect the person's membership of the Mental Health Court.	20 21
648 Appointment of acting president	22
The Governor in Council may appoint a member of the Mental Health Court to act as the president—	23 24
(a) for any period the office is vacant; or	25

[s 649]

- (b) for any period, or all periods, when the president is absent from duty or from Queensland or, for another reason, can not perform the duties of the office.

Division 5 Assisting clinicians

649 Functions

- (1) The functions of an assisting clinician are to—
 - (a) examine material received for a hearing to identify matters requiring further examination and to make recommendations to the Mental Health Court about the matters; and
 - (b) make recommendations about the making of court examination orders under section 666; and
 - (c) assist the court by advising it—
 - (i) on the meaning and significance of clinical evidence; and
 - (ii) about clinical issues relating to the treatment, care and detention of persons under this Act; and
 - (d) assisting the court and the registry by advising them about matters relating to the hearing of proceedings or the administration of the court.
- (2) However, an assisting clinician’s functions are limited to matters within the clinician’s professional expertise.

650 Appointment

- (1) The Governor in Council may, on the recommendation of the Minister, appoint a following person (an *assisting clinician*) by gazette notice to assist the Mental Health Court—
 - (a) a psychiatrist;

(b)	a person with expertise in the care of persons who have an intellectual disability.	1 2
(2)	In recommending a person for appointment as an assisting clinician, the Minister must be satisfied the person has the qualifications and experience necessary to perform an assisting clinician's functions.	3 4 5 6
(3)	An assisting clinician holds office for the term, of not more than 3 years, stated in the gazette notice.	7 8
(4)	An assisting clinician is to be appointed under this Act and not under the <i>Public Service Act 2008</i> .	9 10
651	Conditions of appointment	11
(1)	An assisting clinician is entitled to be paid the remuneration and allowances decided by the Governor in Council.	12 13
(2)	An assisting clinician holds office on the terms and conditions, not provided for under this Act, decided by the Governor in Council.	14 15 16
652	Resignation	17
	An assisting clinician may resign by signed notice given to the Minister.	18 19
653	Termination of appointment	20
(1)	The Governor in Council may terminate the appointment of an assisting clinician if the Governor in Council is satisfied the assisting clinician—	21 22 23
(a)	has become incapable of performing the assisting clinician's duties; or	24 25
(b)	has performed the assisting clinician's duties carelessly, incompetently or inefficiently; or	26 27

[s 654]

(c)	has been guilty of misconduct that could warrant dismissal from the public service if the assisting clinician were a public service officer.	1 2 3
(2)	The Governor in Council must terminate the appointment of an assisting clinician if the assisting clinician—	4 5
(a)	no longer has the qualifications or experience necessary to perform an assisting clinician’s functions; or	6 7
	<i>Example—</i>	8
	a psychiatrist stops holding specialist registration in the specialty of psychiatry under the <i>Health Practitioner Regulation National Law (Queensland) 2009</i>	9 10 11
(b)	is convicted of an indictable offence.	12
Division 6	Mental Health Court Registry and registrar	13 14
654	Mental Health Court Registry	15
(1)	There is a Mental Health Court Registry.	16
(2)	The registry consists of—	17
(a)	the registrar; and	18
(b)	the other staff necessary for the Mental Health Court to exercise its jurisdiction.	19 20
(3)	The registrar and other staff are to be employed under the <i>Public Service Act 2008</i> .	21 22
655	Registry’s functions	23
	The registry has the following functions—	24
(a)	to act as the registry for the Mental Health Court;	25
(b)	to provide administrative support to the court;	26

(c)	any other functions conferred on the registry under this Act.	1 2
656	Registrar's functions	3
	The registrar administers the registry and has the functions conferred on the registrar under this or another Act.	4 5
657	Registrar's powers—general	6
(1)	The registrar has the power to do all things necessary or convenient to be done to perform the registrar's functions.	7 8
(2)	In performing a function or exercising a power, the registrar must comply with a direction relating to the performance or exercise given by—	9 10 11
(a)	a member of the Mental Health Court for a proceeding being heard by the member; or	12 13
(b)	the president.	14
658	Registrar's power to issue subpoena	15
(1)	For the Mental Health Court exercising its jurisdiction, the registrar may issue a subpoena requiring the person to whom the subpoena is directed—	16 17 18
(a)	to produce a stated or described document; or	19
(b)	to attend before the court to give evidence.	20
(2)	The subpoena may be issued—	21
(a)	on the registrar's own initiative; or	22
(b)	at the direction of the court; or	23
(c)	at the request of a party to a proceeding.	24
(3)	The person to whom the subpoena is directed must comply with the subpoena.	25 26

[s 659]

(4)	Failure to comply with the subpoena without lawful excuse is contempt of court and a person who fails to comply may be dealt with for contempt of court.	1 2 3
659	Registrar’s power to require administrator to produce document	4 5
(1)	For the Mental Health Court exercising its jurisdiction, the registrar may require the administrator of an authorised mental health service or of the forensic disability service to give the registrar a stated or described document.	6 7 8 9
(2)	The requirement must be made by written notice given to the administrator.	10 11
(3)	The administrator must comply with the notice despite an obligation under an Act or law not to give the document or disclose information in the document.	12 13 14
660	Registrar’s power to require person to be brought before Mental Health Court	15 16
(1)	For the Mental Health Court exercising its jurisdiction, the registrar may—	17 18
(a)	require the administrator of an authorised mental health service or of the forensic disability service to bring a person for whom the service is responsible before the court at a stated time and place; or	19 20 21 22
(b)	require the custodian of a person in lawful custody to bring the person before the court at a stated time and place.	23 24 25
(2)	The requirement must be made by written notice given to the administrator or custodian.	26 27
(3)	The administrator or custodian must comply with the notice.	28
(4)	For subsection (1), an authorised person may—	29

-
- (a) transport the person from the authorised mental health service or forensic disability service to appear before the court; and
 - (b) on the adjournment of the hearing, transport the person from the court to the authorised mental health service or forensic disability service.

Note—

For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.

661 Registrar’s power to require prosecuting authority to give particular documents

- (1) For the Mental Health Court exercising its jurisdiction for a reference in relation to a person, the registrar may require the prosecuting authority for the offence to give the registrar—
 - (a) a written report about the criminal history of the person; or
 - (b) a brief of evidence in relation to the offence.
- (2) The requirement must be made by written notice given to the prosecuting authority.
- (3) The prosecuting authority must comply with the notice.
- (4) Subsection (1) applies to the criminal history in the possession of the prosecuting authority or to which the prosecuting authority has access.

662 Delegation by registrar

- (1) The registrar may delegate a function of the registrar under this or another Act to an appropriately qualified member of the staff of the registry.
- (2) In this section—
function includes a power.

[s 663]

Division 7	Protection and immunities	1
663	Contempt of court	2
(1)	The Mental Health Court has all the protection, powers, jurisdiction and authority the Supreme Court has for a contempt of court.	3 4 5
(2)	The court must comply with the provisions of the <i>Uniform Civil Procedure Rules 1999</i> relating to contempt of court, with necessary changes.	6 7 8
(3)	The registrar may apply to the court for an order that a person be committed to prison for contempt of court.	9 10
(4)	The court's jurisdiction to punish a contempt of court may be exercised on the initiative of a member of the court.	11 12
(5)	The court has jurisdiction to punish an act or omission as a contempt of court, even if a penalty is prescribed for the act or omission.	13 14 15
664	Conduct that is contempt and offence	16
(1)	If conduct of a person is both contempt of the Mental Health Court and an offence, the person may be proceeded against for the contempt or for the offence.	17 18 19
(2)	However, the person is not liable to be punished twice for the same conduct.	20 21
665	Protection and immunity for member of Mental Health Court and assisting clinician	22 23
(1)	A member of the Mental Health Court has, in the exercise of jurisdiction under this Act, the same protection and immunity as a Supreme Court judge has in the performance of a judge's functions.	24 25 26 27
(2)	An assisting clinician has, in the performance of the assisting clinician's functions under this Act, the same protection and	28 29

immunity as a Supreme Court judge has in the performance of
a judge's functions. 1
2

Division 8 Court examination orders 3

666 Making of court examination order 4

- (1) The Mental Health Court may make an order (a *court examination order*) requiring the person the subject of a proceeding before the court to submit to an examination by a stated examining practitioner. 5
6
7
8

Note— 9

A court examination order is a type of judicial order. A judicial order does not authorise the provision of involuntary treatment and care to the person. 10
11
12

- (2) The court examination order must— 13
- (a) be in the approved form; and 14
 - (b) state the matters on which the examining practitioner must report to the court. 15
16
- (3) The examining practitioner must give a written report on the examination to the court. 17
18

**667 Recommendation or request for court examination order on reference 19
20**

- (1) This section applies if, for a proceeding for a reference in relation to a person, an assisting clinician recommends, or the director of public prosecutions asks, that the Mental Health Court make a court examination order for the person. 21
22
23
24
- (2) The registrar must give the parties to the proceeding written notice of the recommendation or request. 25
26
- (3) The notice must state that the parties may make written submissions on the recommendation or request within the reasonable time stated in the notice. 27
28
29

[s 668]

(4)	The registrar must give the court—	1
(a)	the recommendation or request; and	2
(b)	any submission made by a party on it.	3
(5)	The director of public prosecutions must pay the costs of an examination requested by the director of public prosecutions.	4 5
668	Transport, detention and examination of person under court examination order	6 7
(1)	This section applies if the Mental Health Court makes a court examination order for a person the subject of a proceeding before the court.	8 9 10
(2)	For examining the person, the order may authorise an authorised person to transport the person to an inpatient unit of a stated authorised mental health service.	11 12 13
	<i>Note—</i>	14
	For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.	15 16
(3)	However, the court may make an order under subsection (2) only if the court is satisfied there is no other reasonably practicable way to ensure a thorough examination of the person’s mental condition.	17 18 19 20
(4)	The person may be detained in the authorised mental health service for the examination for—	21 22
(a)	if the order states a period of more than 3 days—the stated period; or	23 24
(b)	otherwise—not more than 3 days.	25
(5)	The examining practitioner may examine the person without the consent of the person or anyone else.	26 27
(6)	Also, the examining practitioner, or anyone lawfully helping the examining practitioner, may use the force that is necessary and reasonable in the circumstances to examine the person.	28 29 30

669	What happens at end of examination	1
(1)	This section applies after the end of the time allowed for the person's examination or on the earlier completion of the person's examination.	2 3 4
(2)	If the person was taken from lawful custody for the examination, an authorised person may transport the person from the authorised mental health service to the person's place of custody.	5 6 7 8
	<i>Note—</i>	9
	For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.	10 11
(3)	If the person was not taken from another authorised mental health service or the forensic disability service, or from lawful custody, for the examination, the administrator of the authorised mental health service in which the person is detained must ensure arrangements are made for the person to be transported to—	12 13 14 15 16 17
	(a) the place from which the person was taken for the examination; or	18 19
	(b) another place to which the person reasonably asks to be taken.	20 21
(4)	The person may be detained in the authorised mental health service until the person is transported, under subsection (2), from the service.	22 23 24
(5)	Subsections (2) and (3) do not apply if the person is, or becomes—	25 26
	(a) an involuntary patient who may be detained in an authorised mental health service or the forensic disability service; or	27 28 29
	(b) a classified patient (voluntary).	30

[s 670]

Division 9	Reviews of detention in authorised mental health service or forensic disability service	1 2 3
670	Definitions for div 9	4
	In this division—	5
	<i>appointed person</i> see section 675.	6
	<i>relevant service</i> means—	7
	(a) an authorised mental health service; or	8
	(b) the forensic disability service.	9
671	Power to review detention	10
(1)	The Mental Health Court may, on application by a prescribed person or on its own initiative, review a person’s detention in a relevant service to decide whether the person’s detention is lawful.	11 12 13 14
(2)	However, subsection (1) does not apply if the person’s detention in the relevant service has been ordered by the Mental Health Court.	15 16 17
(3)	An application for review must—	18
	(a) be in the approved form; and	19
	(b) state the grounds on which it is made.	20
(4)	In this section—	21
	<i>prescribed person</i> means the following—	22
	(a) a person who is detained in a relevant service;	23
	(b) an interested person for the person mentioned in paragraph (a);	24 25
	(c) the Attorney-General.	26

-
- 672 Notice of hearing** 1
- (1) The registrar must give each of the following persons written 2
notice of the hearing of a review of a person's detention in a 3
relevant service— 4
- (a) the person who is detained in the relevant service; 5
 - (b) if the person is not the applicant—the applicant; 6
 - (c) the administrator of the relevant service; 7
 - (d) if the relevant service is an authorised mental health 8
service—the chief psychiatrist; 9
 - (e) if the relevant service is the forensic disability 10
service—the director of forensic disability; 11
 - (f) the Attorney-General. 12
- (2) The notice must be given at least 7 days before the hearing. 13
- (3) The notice must state the following— 14
- (a) the time and place of the hearing; 15
 - (b) the nature of the hearing; 16
 - (c) the person's rights at the hearing. 17
- 673 Parties to proceeding** 18
- (1) The parties to the proceeding for the review are— 19
- (a) the person who is detained in the relevant service; and 20
 - (b) if the person is not the applicant—the applicant; and 21
 - (c) if the relevant service is an authorised mental health 22
service—the chief psychiatrist; and 23
 - (d) if the relevant service is the forensic disability 24
service—the director of forensic disability. 25
- (2) Also, the Attorney-General may elect to be a party to the 26
proceeding. 27

[s 674]

(3)	An election under subsection (2) must be made by filing a notice in the registry.	1 2
674	Consideration of application	3
(1)	The Mental Health Court must consider the application as soon as practicable after it is made.	4 5
(2)	The court may refuse the application if the court is satisfied the application—	6 7
(a)	may more properly be dealt with by the tribunal on a review under chapter 12; or	8 9
(b)	is frivolous or vexatious.	10
675	Appointment of person to inquire into detention	11
	For reviewing a person’s detention in a relevant service, the Mental Health Court may, by order, direct a stated person (the <i>appointed person</i>) to inquire into, and report to the court on, the person’s detention in the service.	12 13 14 15
676	Administrator to ensure help given to appointed person	16
	The administrator of the relevant service must ensure the appointed person is given reasonable help to carry out the inquiry.	17 18 19
677	General powers of appointed person	20
(1)	For carrying out the inquiry, the appointed person may exercise 1 or more of the following powers—	21 22
(a)	enter the relevant service;	23
(b)	examine the person who is detained in the relevant service;	24 25
(c)	search any part of the relevant service;	26

(d)	inspect, examine, test, measure, photograph or film any part of the relevant service or any documents or other thing in the service;	1 2 3
(e)	take extracts from, or make copies of, any documents in the relevant service;	4 5
(f)	take into the relevant service any persons, equipment and materials the appointed person reasonably requires for exercising powers in relation to the service.	6 7 8
(2)	The appointed person may exercise a power under subsection (1) with the help, and using the force, that is necessary and reasonable in the circumstances.	9 10 11
678	Appointed person's power to ask questions	12
(1)	The appointed person may require another person to answer a question about the person's detention.	13 14
(2)	When making the requirement, the appointed person must warn the other person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.	15 16 17
(3)	The person must comply with the requirement unless the person has a reasonable excuse.	18 19
	Maximum penalty—100 penalty units.	20
(4)	It is a reasonable excuse for the person to fail to answer the question if complying with the requirement might tend to incriminate the person.	21 22 23
(5)	The person does not commit an offence against subsection (3) if the information sought by the appointed person is not in fact relevant to the person's detention.	24 25 26
679	Mental Health Court may direct person's discharge	27
(1)	This section applies if, after considering the evidence before it, including any report prepared by the appointed person, the Mental Health Court is satisfied the person's detention in the relevant service is unlawful.	28 29 30 31

[s 680]

(2)	The court must, by order, direct that the person be immediately discharged from the relevant service.	1 2
(3)	The administrator of the relevant service must ensure the order is complied with.	3 4
680	Other remedies not affected	5
	This division does not limit any other remedy available to the person.	6 7
Division 10	Procedural provisions	8
681	General right of appearance and representation	9
	A party to a proceeding in the Mental Health Court may—	10
(a)	appear in person at the hearing of the proceeding; or	11
(b)	be represented at the hearing by—	12
(i)	a lawyer; or	13
(ii)	with the leave of the court, a person who is not a lawyer.	14 15
682	Evidence	16
(1)	In conducting a proceeding, the Mental Health Court is not bound by the rules of evidence unless the court decides it is in the interests of justice that it be bound for the proceeding or a part of the proceeding.	17 18 19 20
(2)	The court may make the decision on application by a party to the proceeding or on its own initiative.	21 22
683	Proof of matters	23
(1)	No party to a proceeding bears the onus of proof of any matter in the proceeding.	24 25

(2)	A matter to be decided by the Mental Health Court must be decided on the balance of probabilities.	1 2
684	Directions	3
	The Mental Health Court may give directions about the hearing of a proceeding.	4 5
	<i>Note—</i>	6
	See also the <i>Evidence Act 1977</i> , part 3A. The stated purposes of the part include the facilitation of the giving and receiving of evidence, and the making and receiving of submissions, in Queensland court proceedings by audio visual link or audio link.	7 8 9 10
685	Assisting clinician’s advice before or during adjournment of hearing	11 12
(1)	This section applies to advice given by an assisting clinician to the Mental Health Court—	13 14
(a)	before the hearing of a proceeding starts; or	15
(b)	during an adjournment of the hearing of a proceeding, other than an adjournment for the court to make its decision.	16 17 18
(2)	During the hearing, the court must inform each party to the proceeding of the advice unless the party tells the court it does not require the information.	19 20 21
(3)	However, this section does not apply to advice mentioned in section 649(1)(d) that an assisting clinician gives the court.	22 23
686	Assisting clinician’s advice during hearing	24
(1)	Advice given by an assisting clinician to the Mental Health Court during the hearing of a proceeding must be given in a way that can be heard by the parties to the proceeding.	25 26 27
(2)	However, this section does not apply to advice mentioned in section 649(1)(d).	28 29

[s 687]

687	Particular advice of assisting clinician to be stated in reasons for decision	1 2
(1)	This section applies if the Mental Health Court is satisfied advice given by an assisting clinician to the court materially contributed to the court’s decision in a proceeding.	3 4 5
(2)	The court must state the advice in the court’s reasons for its decision.	6 7
688	When court may conduct hearing in absence of person	8
	The Mental Health Court may conduct the hearing of a proceeding in the absence of the person who is the subject of the proceeding only if the court is satisfied it is expedient and in the interests of justice to do so.	9 10 11 12
689	Appointing assistant	13
	The Mental Health Court may appoint a person with appropriate knowledge or experience to assist it in a hearing, including, for example, a person with appropriate communication skills or appropriate cultural or social knowledge or experience.	14 15 16 17 18
690	Court may sit and adjourn hearing	19
	The Mental Health Court may, subject to the court rules—	20
(a)	sit at any time and in any place for the hearing of a proceeding; and	21 22
(b)	adjourn the hearing of a proceeding to any time and place.	23 24
691	Hearing of reference generally open to public	25
(1)	The hearing of a proceeding for a reference is open to the public unless the Mental Health Court, by order, directs that the hearing or part of the hearing not be open to the public.	26 27 28

[s 692]

-
- (2) However, the court may make an order directing that the hearing or part of the hearing not be open to the public only if the court is satisfied it is in the interests of justice. 1
2
3
- (3) This section is subject to section 693. 4
- 692 Particular hearings not generally open to public 5**
- (1) This section applies to the following proceedings— 6
- (a) an appeal under chapter 13 to the Mental Health Court; 7
- (b) a review under division 9 of the detention of a person. 8
- (2) The hearing of the proceeding must not be open to the public unless the court, by order, directs that the hearing or part of the hearing be open to the public. 9
10
11
- (3) However, the court may make an order directing that a hearing or part of a hearing be open to the public only if the court is satisfied— 12
13
14
- (a) the person the subject of the proceeding has agreed to the order; and 15
16
- (b) the order will not result in serious harm to the person's health or risk the safety of anyone else. 17
18
- (4) This section is subject to section 693. 19
- 693 Hearing about minor not open to public 20**
- (1) This section applies if a minor is the subject of a proceeding in the Mental Health Court. 21
22
- (2) The hearing of the proceeding is not open to the public. 23
- (3) However, the court may permit a person to be present during the hearing if the court is satisfied it is in the interests of justice. 24
25
26

[s 694]

694 Confidentiality order	1
(1) In a proceeding, the Mental Health Court may, by order (a <i>confidentiality order</i>), prohibit or restrict the disclosure of any of the following to the person the subject of the proceeding—	2 3 4 5
(a) information given before it;	6
(b) matters contained in documents filed with, or received by, it;	7 8
(c) the reasons for its decision in the proceeding.	9
(2) However, the court may make a confidentiality order only if satisfied the disclosure would—	10 11
(a) cause serious harm to the health of the person; or	12
(b) put the safety of someone else at serious risk.	13
(3) If the court makes a confidentiality order, the court must—	14
(a) disclose to the person’s lawyer, or another representative of the person, the information or matters mentioned in subsection (1) to which the order relates; and	15 16 17
(b) give the lawyer or other representative written reasons for the order.	18 19
<i>Note—</i>	20
For the person’s general right of representation, see section 681.	21
(4) If the person is not represented at the hearing of the proceeding by a lawyer or another representative, the court must ensure a lawyer or another representative is appointed for subsection (3).	22 23 24 25
(5) A person must not contravene a confidentiality order unless the person has a reasonable excuse.	26 27
Maximum penalty for subsection (5)—200 penalty units.	28

695	Costs	1
	Each party to a proceeding in the Mental Health Court is to bear the party's own costs of the proceeding.	2 3
696	Death or incapacity of member after hearing started	4
(1)	This section applies if, after a member of the Mental Health Court starts to hear a proceeding, the member dies or becomes incapable of continuing to hear the proceeding.	5 6 7
(2)	A party to the proceeding may, after giving at least 7 days written notice to each other party to the proceeding, apply to the president for an order directing the action to be taken in the proceeding.	8 9 10 11
(3)	The president may, on the application or on the president's own initiative, after consulting with the parties to the proceeding—	12 13 14
	(a) order the proceeding be reheard; or	15
	(b) adjourn the proceeding to allow the incapacitated member of the court to continue when able; or	16 17
	(c) with the consent of the parties, make an order the president considers appropriate about—	18 19
	(i) deciding the proceeding; or	20
	(ii) completing the hearing and deciding the proceeding.	21 22
(4)	If, under subsection (3)(a), a proceeding is reheard, the first hearing is taken not to have happened.	23 24
(5)	An order mentioned in subsection (3)(c) is taken to be a decision of the Mental Health Court.	25 26

[s 697]

Division 11	Rules and practice	1
697	Rule-making power	2
(1)	The Governor in Council may make rules under this Act.	3
(2)	However, rules relating to the Mental Health Court or the registry may be made only with the consent of the president.	4 5
(3)	Rules may be made about the following matters—	6
(a)	the practice and procedure for proceedings in the court;	7
(b)	fees and expenses payable to witnesses;	8
(c)	fees and costs payable in relation to proceedings in the court and the party by or to whom they are to be paid;	9 10
(d)	service of process, notices, orders or other things on parties and other persons.	11 12
(4)	Rules made under this section are rules of court.	13
698	Directions about practice	14
(1)	Subject to this Act and the court rules, the practice and procedure of the Mental Health Court are as directed by the president.	15 16 17
(2)	If this Act or the rules do not provide or sufficiently provide for a particular matter, an application for directions may be made to the president.	18 19 20
Division 12	Miscellaneous	21
699	Annual report	22
(1)	Within 90 days after the end of each financial year, the president must prepare and give the Minister a report on the operations of the Mental Health Court and the registry during the year.	23 24 25 26

(2)	The report must also contain the other information required by the Minister.	1 2
(3)	The Minister must table a copy of the report in the Legislative Assembly within 14 days after the day the Minister receives it.	3 4 5
Part 2	Mental Health Review Tribunal	6
Division 1	Preliminary	7
700	Purpose of pt 2	8
	The purpose of this part is to provide for the following—	9
(a)	the continuation of the Mental Health Review Tribunal, as formerly established under the repealed <i>Mental Health Act 2000</i> ;	10 11 12
(b)	the constitution, jurisdiction and powers of the tribunal;	13
(c)	procedural provisions for proceedings of the tribunal.	14
701	Definition for pt 2	15
	In this part—	16
	<i>party</i> , to a proceeding—	17
(a)	for a proceeding under chapter 12—means a person who has a right to appear in person at the hearing of the proceeding; or	18 19 20
(b)	for an appeal to the tribunal under chapter 13—see section 530.	21 22

[s 702]

Division 2	Continuation, jurisdiction and powers	1 2
702	Continuation of Mental Health Review Tribunal	3
(1)	The Mental Health Review Tribunal, as formerly established under the repealed <i>Mental Health Act 2000</i> , section 436, is continued in existence.	4 5 6
(2)	The tribunal consists of the president, the deputy president and other members.	7 8
703	Jurisdiction and independence	9
(1)	The tribunal has jurisdiction to—	10
(a)	review the following under chapter 12—	11
(i)	treatment authorities;	12
(ii)	forensic orders;	13
(iii)	treatment support orders;	14
(iv)	a person’s fitness for trial;	15
(v)	the detention of a minor in a high security unit; and	16
(b)	hear applications for the following—	17
(i)	examination authorities;	18
(ii)	approvals of regulated treatment;	19
(iii)	approvals of transfers of particular patients into and out of Queensland; and	20 21
(c)	decide appeals under chapter 13, part 2.	22
(2)	In exercising its jurisdiction, the tribunal—	23
(a)	must act independently; and	24
(b)	is not subject to direction or control by any entity, including any Minister.	25 26

704	Powers	1
(1)	The tribunal may do all things necessary or convenient to be done for, or in relation to, exercising its jurisdiction.	2 3
(2)	Without limiting subsection (1), the tribunal has the powers conferred on it under this Act.	4 5
Division 3	Members and staff of tribunal	6
705	Appointment of members	7
(1)	The president is to be appointed by the Governor in Council on a full-time basis.	8 9
(2)	The deputy president and other members are to be appointed by the Governor in Council on a full-time or part-time basis.	10 11
(3)	A person is eligible for appointment as the president or deputy president only if the person—	12 13
(a)	is a lawyer of at least 7 years standing; and	14
(b)	has, in the Minister’s opinion, sufficient knowledge of administrative law and this Act.	15 16
(4)	A person is eligible for appointment as another member only if—	17 18
(a)	the person—	19
(i)	is a lawyer of at least 5 years standing; or	20
(ii)	is a psychiatrist; or	21
(iii)	has other qualifications and experience the Minister considers relevant to exercising the tribunal’s jurisdiction; and	22 23 24
(b)	the Minister is satisfied the person has the competencies developed by the president under section 712(3).	25 26
(5)	In recommending a person for appointment as a member, the Minister must have regard to—	27 28

[s 706]

(a)	the need for a balanced gender representation in the membership of the tribunal; and	1 2
(b)	the range and experience of members; and	3
(c)	the need for the membership of the tribunal to reflect the social and cultural diversity of the general community.	4 5
(6)	Also, in recommending a person for appointment as a member, if the Minister is not responsible for administering the Forensic Disability Act, the Minister must consult with the Minister responsible for administering that Act.	6 7 8 9
(7)	Members are appointed under this Act and not under the <i>Public Service Act 2008</i> .	10 11
706	Duration of appointment	12
(1)	The president holds office for the term, of not more than 5 years, stated in the president's instrument of appointment.	13 14
(2)	The deputy president or another member holds office for the term, of not more than 3 years, stated in the member's instrument of appointment.	15 16 17
707	Terms of appointment	18
(1)	A member is entitled to be paid the remuneration and allowances decided by the Governor in Council.	19 20
(2)	For matters not provided for by this Act, a member holds office on the terms and conditions decided by the Governor in Council.	21 22 23
708	Resignation	24
	A member may resign by signed notice given to the Minister.	25

-
- 709 Termination of appointment** 1
- (1) The Governor in Council may terminate the appointment of a 2
member if the Governor in Council is satisfied the member— 3
- (a) has become incapable of satisfactorily performing the 4
member’s functions; or 5
- (b) has performed the member’s functions carelessly, 6
incompetently or inefficiently; or 7
- (c) has been guilty of misconduct that could warrant 8
dismissal from the public service if the member were a 9
public service officer. 10
- (2) The Governor in Council must terminate the appointment of a 11
member if the member— 12
- (a) ceases to be eligible for appointment as a member; or 13
- (b) is convicted of an indictable offence. 14
- 710 Deputy president to act as president** 15
- The deputy president is to act in the office of the president 16
during— 17
- (a) any period the office is vacant; or 18
- (b) all periods when the president is absent from duty or 19
from Queensland or, for another reason, can not perform 20
the functions of the office. 21
- 711 Executive officer and other staff** 22
- (1) There is to be an executive officer of the tribunal and other 23
staff necessary for the tribunal to exercise its jurisdiction. 24
- (2) The executive officer and other staff are appointed under the 25
Public Service Act 2008. 26
- (3) The president is responsible for the organisational unit made 27
up of the staff of the tribunal and for the organisational unit’s 28
efficient and effective administration and operation. 29

[s 712]

- (4) In performing a function or exercising a power under this Act, the executive officer and other staff of the tribunal are subject to the direction and control of the president. 1
2
3
- 712 President's functions generally** 4
- (1) The functions of the president include— 5
- (a) ensuring the quick and efficient discharge of the tribunal's business; and 6
7
- (b) giving directions about— 8
- (i) the arrangement of the tribunal's business; and 9
- (ii) the number of members to constitute the tribunal for a particular hearing; and 10
11
- (iii) the members who are to constitute the tribunal for a particular hearing; and 12
13
- (iv) the places and times the tribunal is to sit; and 14
- (c) other functions conferred on the president under this Act. 15
16
- (2) Also, the president must ensure the members are adequately and appropriately trained to enable the tribunal to perform its functions effectively and efficiently. 17
18
19
- (3) For subsection (2), the president must develop competencies in the following— 20
21
- (a) administrative law; 22
- (b) the operation of this Act; 23
- (c) mental health and intellectual disability issues, including forensic mental health and forensic disability issues. 24
25
26
- (4) A direction mentioned in subsection (1) must not be inconsistent with this Act. 27
28

713	President's powers	1
(1)	The president has the powers given under this Act.	2
(2)	Also, the president may do all things necessary or convenient to be done to perform the president's functions.	3 4
Division 4	Constitution of tribunal for hearings	5
714	Particular proceedings	6
(1)	This section applies to—	7
(a)	a proceeding for a review under chapter 12; or	8
(b)	a proceeding for hearing an application under—	9
(i)	chapter 12, part 9, division 1 for approval to perform electroconvulsive therapy on a person; or	10 11
(ii)	chapter 12, part 10, division 1 for approval of the transfer into Queensland of a person subject to an interstate forensic order; or	12 13 14
(iii)	chapter 12, part 10, division 2 for approval of the transfer out of Queensland of a person subject to a forensic order (mental health), forensic order (disability) or treatment support order; or	15 16 17 18
(c)	an appeal under chapter 13, part 2.	19
(2)	The tribunal must be constituted by at least 3, but not more than 5, members of whom—	20 21
(a)	at least 1 must be a lawyer; and	22
(b)	at least 1 must be a psychiatrist or, if a psychiatrist is not readily available but another doctor is available, another doctor; and	23 24 25
(c)	at least 1 person who is not a lawyer or doctor.	26
(3)	However, for a proceeding for a review of a treatment authority for a person or for hearing an application for approval to perform electroconvulsive therapy on a person, the	27 28 29

[s 715]

tribunal may be constituted by fewer than 3 members if the president is satisfied—	1 2
(a) it is appropriate, expedient and in the person’s best interests to do so; and	3 4
(b) for hearing an application for approval to perform electroconvulsive therapy on a person—electroconvulsive therapy has been performed on the person under section 236 or approval to perform electroconvulsive therapy on the person is required urgently.	5 6 7 8 9 10
715 Application for examination authority	11
(1) This section applies to a proceeding for hearing an application under chapter 12, part 8 for an examination authority.	12 13
(2) The tribunal must be constituted by at least 1 member who is a lawyer.	14 15
716 Application for approval to perform non-ablative neurosurgical procedure	16 17
(1) This section applies to a proceeding for hearing an application under chapter 12, part 9, division 2 for approval to perform a non-ablative neurosurgical procedure on a person.	18 19 20
(2) The tribunal must be constituted by the following 5 members—	21 22
(a) the president, deputy president or another member who is a lawyer of at least 7 years standing;	23 24
(b) 2 members who are psychiatrists;	25
(c) 1 member who is a neurosurgeon;	26
(d) 1 member who is not a lawyer or doctor.	27
(3) In this section— <i>neurosurgeon</i> means—	28 29

[s 717]

(a)	a person registered under the Health Practitioner Regulation National Law to practise in the medical profession as a specialist registrant in the speciality of neurosurgery, other than as a student; or	1 2 3 4
(b)	a person registered under the Health Practitioner Regulation National Law with limited registration to practise in an area of need in a specialist position in neurosurgery.	5 6 7 8
717	Matters president to consider in constituting tribunal	9
(1)	In deciding the tribunal's constitution for a proceeding, the president must—	10 11
(a)	for a proceeding in relation to an involuntary patient, have regard to—	12 13
(i)	the safety and welfare of the patient and the safety of others; and	14 15
(ii)	the patient's mental condition; and	16
(b)	to the extent practicable, include a member who is culturally appropriate to the person the subject of the proceeding.	17 18 19
(2)	Also, for a proceeding in relation to a minor, if the tribunal is required to be constituted by at least 1 member who is a psychiatrist, the psychiatrist must have relevant knowledge and expertise in child and adolescent psychiatry.	20 21 22 23
	<i>Note—</i>	24
	See sections 714(2) and 716 for when the tribunal is required to be constituted by at least 1 member who is a psychiatrist.	25 26
718	Presiding member	27
(1)	The presiding member for a proceeding is—	28
(a)	if the tribunal is constituted by 1 member—the constituting member; or	29 30

-
- (6) The examining practitioner must give the tribunal a written report on the examination. 1
2
- (7) In this section— 3
- relevant person* means— 4
- (a) a person who is the subject of a proceeding for a review under chapter 12; or 5
6
- (b) a person who is the subject of an application under chapter 12, part 9, division 1 for approval to perform electroconvulsive therapy; or 7
8
9
- (c) a person who is the subject of an application under chapter 12, part 10, division 2 for approval of the transfer of the person out of Queensland. 10
11
12

720 Confidentiality order 13

- (1) In a proceeding, the tribunal may, by order (a *confidentiality order*), prohibit or restrict the disclosure of any of the following to a person the subject of the proceeding— 14
15
16
- (a) information given before it; 17
- (b) matters contained in documents filed with, or received by, it; 18
19
- (c) the reasons for its decision on the proceeding. 20
- (2) However, the tribunal may make a confidentiality order only if satisfied the disclosure would— 21
22
- (a) cause serious harm to the health of the person; or 23
- (b) put the safety of someone else at serious risk. 24
- (3) If the tribunal makes a confidentiality order, the tribunal must— 25
26
- (a) disclose to the person's lawyer, or another representative, the information or matters mentioned in subsection (1) to which the order relates; and 27
28
29

[s 721]

- (b) give the lawyer or other representative written reasons for the order. 1
2
 - (4) If the person is not represented at the hearing of the proceeding by a lawyer or another representative, the tribunal must ensure a lawyer or another representative is appointed for subsection (3). 3
4
5
6
 - (5) A person must not contravene a confidentiality order unless the person has a reasonable excuse. 7
8
Maximum penalty for subsection (5)—200 penalty units. 9
- 721 Reports for particular review proceedings 10**
- (1) This section applies if the tribunal is reviewing any of the following— 11
12
 - (a) a treatment authority; 13
 - (b) a forensic order; 14
 - (c) a treatment support order; 15
 - (d) a person’s fitness for trial; 16
 - (e) the detention of a minor in a high security unit. 17
 - (2) The tribunal must ensure a treating practitioner for the person the subject of the review prepares a report, in the approved form, about— 18
19
20
 - (a) for a review mentioned in subsection (1)(a), (b) or (c)—the relevant circumstances of the person; and 21
22
 - (b) other matters relevant to a decision the tribunal may make under chapter 12 on the review. 23
24
 - (3) At least 7 days before the hearing of the review, the treating practitioner must give a copy of the report to— 25
26
 - (a) the tribunal; and 27
 - (b) the person the subject of the review. 28
 - (4) However, the treating practitioner is not required to comply with subsection (3)(b) if the treating practitioner intends to 29
30

apply to the tribunal for a confidentiality order in relation to the report.	1 2
(5) In this section—	3
<i>relevant circumstances</i> , of a person, for a review mentioned in subsection (1)(b) or (c), includes the nature of the relevant unlawful act and the period of time that has passed since the act happened.	4 5 6 7
<i>treating practitioner</i> , for a person the subject of a review, means—	8 9
(a) a psychiatrist treating the person; or	10
(b) a senior practitioner under the Forensic Disability Act responsible for performing obligations for the person under chapter 2, part 1 of that Act.	11 12 13
Division 6	
Procedural provisions for ch 12 proceedings	14 15
Subdivision 1	
Applications	16
722 Application of sdiv 1	17
This subdivision applies to an application made to the tribunal under chapter 12.	18 19
723 Approved form	20
The application must be made in the approved form.	21
724 Frivolous or vexatious application	22
(1) If the application is made by the person who is the subject of the proceeding or an interested person for the person, the president may dismiss the application if the president is satisfied the application is frivolous or vexatious.	23 24 25 26

[s 725]

(2)	The president may dismiss an application under this section without a hearing.	1 2
725	Hearing of application	3
	The tribunal must hear the application—	4
(a)	for an application under chapter 12, part 8 for an examination authority or chapter 12, part 9, division 1 for approval to perform electroconvulsive therapy on a person if a certificate under section 236(3) is in force for the person—as soon as practicable after the application is made; or	5 6 7 8 9 10
(b)	for any other application under chapter 12, part 9, division 1—within 14 days after the application is made; or	11 12 13
(c)	for any other application—within 28 days after the application is made.	14 15
Subdivision 2	Adjournment of hearing of particular periodic reviews	16 17
726	Application of sdiv 2	18
(1)	This subdivision applies if—	19
(a)	the administrator of an authorised mental health service is responsible for a person (the <i>relevant person</i>) subject to a treatment authority or treatment support order; and	20 21 22
(b)	within 7 days before the hearing of a periodic review under chapter 12 (the <i>scheduled review</i>) of the treatment authority or treatment support order—	23 24 25
(i)	the relevant person becomes a patient required to return; and	26 27
(ii)	the relevant person’s treating health service can not locate the person.	28 29

-
- (2) This subdivision also applies if— 1
- (a) an authorised mental health service or the forensic 2
disability service is responsible for a person (also *the* 3
relevant person) subject to a forensic order (mental 4
health) or forensic order (disability); and 5
- (b) within 14 days before the hearing of a periodic review 6
under chapter 12 (also the *scheduled review*) of the 7
forensic order— 8
- (i) if an authorised mental health service is 9
responsible for the relevant person—the relevant 10
person is a patient required to return and the 11
service can not locate the person; or 12
- (ii) if the forensic disability service is responsible for 13
the relevant person—the relevant person is a 14
person to whom the Forensic Disability Act, 15
section 113 applies and the forensic disability 16
service can not locate the person. 17
- 727 Definitions for sdiv 2 18**
- In this subdivision— 19
- relevant person* see section 726(1)(a) and (2)(a). 20
- scheduled review* see section 726(1)(b) and (2)(b). 21
- 728 Adjournment of hearing 22**
- (1) The administrator of the relevant person’s treating health 23
service or of the forensic disability service must give the 24
tribunal written notice of the relevant person’s absence. 25
- (2) When the tribunal receives the notice— 26
- (a) the hearing of the scheduled review is taken to be 27
adjourned; and 28
- (b) the requirement for the tribunal to conduct the scheduled 29
review under chapter 12, part 2, 3 or 5 stops applying. 30

[s 729]

729	Hearing of scheduled review to be conducted on relevant person's return	1 2
(1)	On the return of the relevant person to the person's treating health service or the forensic disability service, the administrator of the person's treating health service or of the forensic disability service must give the tribunal written notice of the person's return.	3 4 5 6 7
(2)	The tribunal must, within 21 days after the day it receives the notice, hear the scheduled review.	8 9
Division 7	General procedural provisions	10
Subdivision 1	Preliminary	11
730	Application of div 7	12
	This division applies to any proceeding in the tribunal under this Act.	13 14
731	Conducting proceedings generally	15
(1)	The procedure for a proceeding is at the discretion of the tribunal, subject to this Act and the tribunal rules.	16 17
(2)	In all proceedings, the tribunal must act fairly and according to the substantial merits of the case.	18 19
(3)	In conducting a proceeding, the tribunal—	20
(a)	must observe the rules of natural justice; and	21
(b)	must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the matters before the tribunal; and	22 23 24
(c)	is not bound by the rules of evidence; and	25
(d)	may inform itself on a matter in a way it considers appropriate; and	26 27

(e)	must ensure, to the extent practicable, all relevant material is disclosed to the tribunal to enable it to decide the proceeding with all the relevant facts.	1 2 3
732	Presentation of party's case and inspection of documents	4 5
(1)	A party to a proceeding must be given a reasonable opportunity to present the party's case and, in particular, to inspect a document to which the tribunal proposes to have regard in reaching a decision in the proceeding and to make submissions about the document.	6 7 8 9 10
(2)	However, subsection (1) does not apply to the extent a party's inspection of a document would contravene a confidentiality order or section 741.	11 12 13
Subdivision 2	Pre-hearing matters	14
733	Matters to be stated in notice of hearing	15
	If the tribunal is required to give stated persons notice of the hearing of a proceeding, the notice must state the following—	16 17
(a)	the nature of the hearing;	18
(b)	the time and place of the hearing;	19
(c)	the rights at the hearing of the person who is the subject of the proceeding.	20 21
734	Right to appear	22
(1)	A person who is entitled be given notice of the hearing of a proceeding has a right to appear in person at the hearing.	23 24
(2)	Also, without limiting subsection (1), the chief psychiatrist may, with the leave of the tribunal, appear in person at the hearing of a proceeding.	25 26 27

[s 735]

- (3) However, despite subsection (1), the following persons do not have a right to appear in person at the hearing of a proceeding—
- (a) the administrator of an authorised mental health service;
 - (b) the administrator of the forensic disability service;
 - (c) a person who is given notice of the hearing of the proceeding under section 285.

735 Attorney-General to give notice of intention to appear

- (1) This section applies in relation to the hearing of the following proceedings—
- (a) a review under chapter 12, part 3, 4 or 6;
 - (b) an application under chapter 12, part 10.
- (2) The Attorney-General may be represented at the hearing of the proceeding by a lawyer.
- (3) If the Attorney-General intends to appear or be represented at the hearing of the proceeding, the Attorney-General must, as soon as practicable and not later than 7 days before the hearing, give written notice to the tribunal.
- (4) The Attorney-General’s role at the hearing of the proceeding is to represent the public interest.

736 Disclosure of documents to be relied on in hearing

- (1) If a party to a proceeding intends to rely on a document in the hearing of the proceeding, the party must give a copy of the document to each other party to the proceeding at least 3 days before the hearing.
- (2) However, if the party intends to apply to the tribunal for a confidentiality order in relation to a document, the party—
- (a) is not required to give a copy of the document under subsection (1) to the person the subject of the proceeding; and

[s 737]

-
- (b) if the person is represented by a lawyer or another person—must give a copy of the document to the lawyer or other person. 1
2
3
- (3) In this section— 4
document does not include a victim impact statement. 5

Subdivision 3 Hearings 6

737 Right of representation and support 7

- (1) The person who is the subject of a proceeding may be represented at the hearing of the proceeding by a nominated support person, a lawyer or another person. 8
9
10
- (2) Also, the person who is the subject of a proceeding may be accompanied at the hearing of the proceeding by— 11
12
- (a) 1 member of the person’s support network; or 13
- (b) with the tribunal’s leave, more than 1 member of the person’s support network. 14
15

Note— 16

See section 761 for the tribunal’s power to exclude a person from a tribunal proceeding. 17
18

- (3) A person who represents the person at the hearing of a proceeding must— 19
20
- (a) to the extent the person is able to express the person’s views, wishes and preferences—represent the person’s views, wishes and preferences; and 21
22
23
- (b) to the extent the person is unable to express the person’s views, wishes and preferences—represent the person’s best interests. 24
25
26
- (4) In this section— 27
support network, of a person, means— 28
- (a) the person’s nominated support persons, if any; or 29

[s 738]

(b) the person’s family, carers and other support persons. 1

738 Appointment of representative 2

- (1) This section applies if the person the subject of a proceeding 3
is not represented by a lawyer or another person at the hearing 4
of the proceeding. 5
- (2) The tribunal may appoint a lawyer or another person (the 6
appointed representative) to represent the person if the 7
tribunal considers it would be in the person’s best interests to 8
be represented at the hearing. 9
- (3) Also, the tribunal must appoint a lawyer (also an *appointed* 10
representative) to represent the person at the hearing if— 11
- (a) the person is a minor; or 12
- (b) the hearing is— 13
- (i) for a review under chapter 12, part 6 of the 14
person’s fitness for trial; 15
- (ii) for an application under chapter 12, part 9, division 16
1 for approval to perform electroconvulsive 17
therapy on the person; 18
- (iii) another hearing prescribed by regulation; or 19
- (c) the Attorney-General is to appear or be represented at 20
the hearing. 21
- (4) If the person is an adult with capacity, the person may, in 22
writing, waive the right to be represented by the appointed 23
representative. 24
- (5) For subsection (4), the person has capacity to waive the right 25
if the person has the ability to understand the nature and effect 26
of a decision to waive the right, and the ability to make and 27
communicate the decision. 28
- (6) The appointment of a lawyer as the person’s appointed 29
representative under subsection (3) is at no cost to the person. 30

739	Hearing not open to public	1
(1)	A hearing of a proceeding must not be open to the public unless the tribunal, by order, directs that the hearing or part of the hearing be open to the public.	2 3 4
(2)	However, the tribunal must not make an order directing that a hearing be open to the public if the person the subject of the hearing is a minor.	5 6 7
(3)	Also, the tribunal may make an order directing that a hearing or part of a hearing be open to the public only if the tribunal is satisfied—	8 9 10
(a)	the person the subject of the hearing, or a lawyer or other representative of the person, has agreed to the order; and	11 12 13
(b)	the order will not result in serious harm to the person’s health or risk the safety of anyone else.	14 15
(4)	A person (an <i>observer</i>) may attend a hearing that is not open to the public under this section to observe the hearing if—	16 17
(a)	the president gives approval for the observer’s attendance at the hearing; and	18 19
(b)	the person the subject of the hearing has agreed to the observer’s attendance.	20 21
(5)	However, the president may not give approval for an observer’s attendance at the hearing if the person the subject of the hearing is a minor.	22 23 24
740	Victim impact statement	25
(1)	For the hearing of a review of a forensic order or treatment support order, a victim of the relevant unlawful act, or a close relative of the victim, may give the tribunal a victim impact statement in relation to the act.	26 27 28 29
(2)	The victim impact statement may include a request by the victim or close relative that the tribunal impose a condition on	30 31

[s 741]

the forensic order or treatment support order that the person must not contact—	1 2
(a) the victim or close relative; or	3
(b) another individual, including, for example, another close relative of the victim.	4 5
(3) For this section, it does not matter whether the victim or the close relative has previously—	6 7
(a) prepared a victim impact statement for the Mental Health Court in relation to the relevant unlawful act; or	8 9
(b) given the tribunal a victim impact statement in relation to the relevant unlawful act.	10 11
741 Restrictions on disclosing victim impact statement	12
(1) The tribunal must not disclose the victim impact statement to the person the subject of the review unless the victim or close relative asks that the statement be disclosed to the person.	13 14 15
(2) Despite a request mentioned in subsection (1), the tribunal may, by order, prohibit the disclosure of the victim impact statement to the person if satisfied the disclosure may adversely affect the health and wellbeing of the person.	16 17 18 19
(3) A person must not contravene an order made under subsection (2) unless the person has a reasonable excuse.	20 21
Maximum penalty—200 penalty units.	22
(4) This section does not prevent the tribunal disclosing the victim impact statement to a lawyer of the person the subject of the review if satisfied the disclosure is in the best interests of the person.	23 24 25 26
(5) Subject to subsection (3), the person’s lawyer may disclose the victim impact statement to the person only if the victim or close relative asks that the statement be disclosed to the person.	27 28 29 30

-
- (6) The person’s lawyer must not disclose the victim impact statement to the person in contravention of subsection (5) unless the lawyer has a reasonable excuse. 1
2
3
Maximum penalty—200 penalty units. 4
- (7) In this section— 5
lawyer, of a person, includes another representative of the person. 6
7
- 742 Requiring witness to attend or produce document or thing** 8
9
- (1) The tribunal may, by written notice given to a person (an *attendance notice*), require the person to— 10
11
- (a) attend the hearing of a proceeding at a stated time and place to give evidence; or 12
13
- (b) produce a stated document or thing that is relevant to the hearing. 14
15
- Examples of a document that may be relevant to a hearing—* 16
a medical report or clinical file for the person the subject of the proceeding 17
18
- Note—* 19
See section 758 for the consequences of failing to comply with an attendance notice. 20
21
- (2) The tribunal may— 22
- (a) require the evidence to be given on oath; or 23
- (b) allow a person appearing as a witness at the hearing to give information by tendering a written statement, verified, if the tribunal directs, by oath. 24
25
26
- (3) For subsection (2)(a), the tribunal may administer an oath. 27
- 743 Tribunal to allow party to call or give evidence** 28
- In a proceeding, the tribunal must allow a party to the proceeding to call or give any evidence. 29
30

[s 744]

744	Proceeding by remote conferencing or on the papers	1
(1)	The tribunal may, if appropriate, conduct all or a part of a proceeding by remote conferencing.	2 3
(2)	Also, for the hearing of a proceeding for a review of a treatment authority, the tribunal may conduct all or a part of the proceeding entirely on the basis of documents, without the parties, their representatives or witnesses appearing at the hearing, if the person subject to the treatment authority does not wish to attend or be represented by another person at the hearing.	4 5 6 7 8 9 10
(3)	Provisions of this Act applying to a hearing apply with necessary changes in relation to a proceeding conducted under subsection (1) or (2).	11 12 13
	<i>Examples of application of subsection (3)—</i>	14
1	If a hearing is conducted under subsection (1) or (2), section 739 continues to apply to the proceeding as if the parties to the proceeding were present before the tribunal.	15 16 17
2	If a hearing is conducted under subsection (2), section 416 will have no application.	18 19
745	Proceeding in absence of involuntary patient	20
(1)	This section applies to a proceeding in relation to an involuntary patient for whom an authorised mental health service or the forensic disability service is responsible.	21 22 23
(2)	The tribunal may hear the proceeding in the absence of the patient if the tribunal considers—	24 25
(a)	either—	26
(i)	the administrator of the service responsible for the patient has taken reasonable steps to ensure the patient attends the hearing of the proceeding and the patient is absent because of the patient’s own free will; or	27 28 29 30 31
(ii)	the patient is unfit to appear; and	32
(b)	it is appropriate and expedient to do so.	33

(3)	Subsection (2) has effect despite division 7, subdivision 1.	1
746	Conducting hearings of proceedings at same time	2
(1)	Nothing in this chapter prevents the tribunal hearing different proceedings under this Act that relate to the same person at the same time.	3 4 5
(2)	Without limiting subsection (1), the tribunal may conduct the hearings of more than 1 review under chapter 12 that relate to the same person at the same time.	6 7 8
	<i>Examples of hearing more than 1 review at the same time—</i>	9
	• hearing an applicant review of a forensic order for a person at the same time as a periodic review of the forensic order for the person	10 11
	• hearing a periodic review of a forensic order for a person at the same time as a review of the person’s fitness for trial	12 13
(3)	In deciding whether to conduct more than 1 hearing for the same person at the same time, the tribunal must have regard to whether it is in the person’s best interests to do so.	14 15 16
747	Adjourning hearing of proceeding	17
	The tribunal may adjourn the hearing of a proceeding for—	18
(a)	if the adjournment is for the purpose of obtaining an examination report under section 719 and the president has approved that the hearing be adjourned for more than 28 days—the period approved by the president; or	19 20 21 22
(b)	otherwise—a period of not more than 28 days.	23
748	Appointing assistant	24
	The tribunal may appoint a person with appropriate knowledge or experience to assist it in a proceeding, including, for example—	25 26 27

[s 749]

- (a) a person with appropriate communication skills or appropriate cultural or social knowledge or experience; or 1
2
3
- (b) a person with expertise in the care of persons with an intellectual disability. 4
5

749 Dealing with documents or other things 6

- (1) If a document or other thing is produced to the tribunal in a proceeding, the tribunal may— 7
8
 - (a) inspect the document or thing; and 9
 - (b) make copies of, photograph, or take extracts from, the document or thing if it is relevant to the proceeding. 10
11
- (2) The tribunal may also keep the document or thing while it is necessary for the proceeding. 12
13
- (3) While the tribunal keeps the document or other thing, the tribunal must permit a person otherwise entitled to possession of the document or thing to inspect, make copies of, photograph, or take extracts from, the document or thing, at the reasonable time and place the tribunal decides. 14
15
16
17
18

750 Way questions decided 19

- (1) The tribunal's decision on a question of law arising in a proceeding is the decision of the presiding member on the question. 20
21
22
- (2) However, if the tribunal is constituted by 1 member who is not a lawyer— 23
24
 - (a) the member must refer the question of law to another member who is a lawyer to decide; and 25
26
 - (b) the other member must decide the question; and 27
 - (c) for subsection (1), the decision of the other member is taken to be the decision of the presiding member. 28
29

-
- (3) If the members constituting the tribunal in a proceeding are divided in opinion about the decision to be made on another question in the proceeding, the tribunal's decision on the question is—
- (a) if there is a majority of the same opinion—the decision of the majority; or
 - (b) otherwise—the decision of the presiding member.
- 751 Referring question of law to Mental Health Court**
- (1) The president may refer a question of law in a proceeding before the tribunal to the Mental Health Court.
- (2) A referral under subsection (1) may be made on the application of a party to the proceeding or on the president's own initiative.
- (3) If a question of law is referred to the Mental Health Court under subsection (1)—
- (a) the Mental Health Court may decide the question and make ancillary orders and directions; and
 - (b) the tribunal must not make a decision about the matter to which the question relates until it receives the Mental Health Court's decision on the question; and
 - (c) the tribunal must not proceed in a way, or make a decision, that is inconsistent with the Mental Health Court's decision on the question.
- (4) If the Mental Health Court decides a question of law referred to it under subsection (1), the tribunal's decision on the question is the decision of the Mental Health Court.
- (5) This section applies despite section 750.
- 752 Costs**
- Each party to a proceeding is to bear the party's own costs of the proceeding.

[s 753]

Subdivision 4	Decisions of tribunal	1
753	Notice of decision	2
(1)	The tribunal must, within 7 days after making its decision in a proceeding, give each person who was entitled to be given notice of the hearing of the proceeding written notice of the decision.	3 4 5 6
(2)	The notice must—	7
(a)	state that the person to whom the notice is given may ask the tribunal for written reasons for its decision; and	8 9
(b)	state the rights under this Act to appeal the tribunal’s decision.	10 11
(3)	Also, if a proceeding is for a review of a person’s fitness for trial under chapter 12, part 6, the tribunal must give the director of public prosecutions written notice of its decision.	12 13 14
754	Written reasons for decision	15
(1)	The tribunal must, on request by a person mentioned in section 753(1), give the person written reasons for the tribunal’s decision.	16 17 18
(2)	The tribunal must comply with the request within 21 days after the day it receives the request.	19 20
(3)	However, subsection (2) does not apply to the extent complying with the request would contravene a confidentiality order or section 741.	21 22 23
755	Requirement to give effect to tribunal decision	24
	Each of the following persons must, as soon as practicable after receiving notice of the tribunal’s decision in the proceeding, ensure the tribunal’s decision is given effect—	25 26 27

-
- (a) if an authorised mental health service is responsible for the person the subject of the proceeding—the administrator of the service;
 - (b) if the forensic disability service is responsible for the person the subject of the proceeding—the administrator of the service.

756 Publishing decision and reasons

- (1) The tribunal may publish its final decision in a proceeding and any reasons for the decision, including, for example, if the tribunal is satisfied the decision or any reasons for the decision may be used as a precedent, in a way it considers appropriate.
- (2) However, the publication of the decision or reasons for the decision must not identify any person.
- (3) Also, the tribunal must ensure the publication of the decision or reasons does not contravene a confidentiality order or section 741.

Subdivision 5 Revocation of particular forensic orders and treatment support orders

757 Order for missing person

- (1) This section applies if a person who is subject to a relevant order is, for a period of more than 3 years—
 - (a) a patient required to return; or
 - (b) a person to whom the Forensic Disability Act, section 113 applies.
- (2) Despite subsection (1), if the relevant order is a forensic order, this section does not apply during any non-revocation period for the order.

[s 758]

- (3) The president may revoke the relevant order for the person if the president considers, on information provided to the tribunal by the administrator of the person's treating health service, or of the forensic disability service, that—
- (a) the person is unlikely to return to Queensland; or
 - (b) the person is presumed to have died.
- (4) The tribunal must, within 7 days after the day the relevant order is revoked, give written notice of the revocation to—
- (a) if an authorised mental health service is responsible for the person—the administrator of the service; or
 - (b) if the forensic disability service is responsible for the person—the administrator of the service.
- (5) In this section—
- relevant order* means—
- (a) a forensic order; or
 - (b) a treatment support order.

Division 8 Offences and contempt 17

758 Offences by witnesses 18

- (1) A person given an attendance notice must not, without reasonable excuse—
- (a) fail to attend as required by the notice; or
 - (b) fail to continue to attend as required by the tribunal until excused from further attendance; or
 - (c) fail to produce a document or other thing the person is required to produce by the attendance notice.
- Maximum penalty—100 penalty units.
- (2) A person appearing as a witness at a hearing of a proceeding must not—

(a)	fail to take an oath or make an affirmation when required by the tribunal; or	1 2
(b)	fail, without reasonable excuse, to answer a question the person is required to answer by the tribunal.	3 4
	Maximum penalty—100 penalty units.	5
(3)	It is a reasonable excuse for a person to fail to answer a question or to produce a document or other thing if answering the question or producing the document or thing might tend to incriminate the person.	6 7 8 9
759	False or misleading information or document	10
(1)	A person must not state to the tribunal or staff member of the tribunal anything the person knows is false or misleading in a material particular.	11 12 13
	Maximum penalty—100 penalty units.	14
(2)	A person must not give the tribunal or staff member of the tribunal a document containing information the person knows is false or misleading in a material particular.	15 16 17
	Maximum penalty—100 penalty units.	18
(3)	Subsection (2) does not apply to a person if the person, when giving the document—	19 20
(a)	tells the tribunal or staff member of the tribunal, to the best of the person’s ability, how the document is false or misleading; and	21 22 23
(b)	if the person has, or can reasonably obtain, the correct information—gives the correct information.	24 25
760	Fabricating evidence	26
	The tribunal is a tribunal for the Criminal Code, section 126.	27
	<i>Note—</i>	28
	The Criminal Code, section 126 deals with fabricated evidence in judicial proceedings.	29 30

[s 761]

761	Contempt of tribunal	1
(1)	A person is in contempt of the tribunal if the person—	2
(a)	insults a member or a staff member of the tribunal at a proceeding, or in going to or returning from a proceeding; or	3 4 5
(b)	unreasonably interrupts a proceeding, or otherwise misbehaves at a proceeding; or	6 7
(c)	creates or continues, or joins in creating or continuing, a disturbance in or near a place where a proceeding is being conducted; or	8 9 10
(d)	obstructs or assaults a person attending a proceeding; or	11
(e)	obstructs a member in the performance of the member's functions or the exercise of the member's powers; or	12 13
(f)	obstructs a person acting under an order made under this Act by the tribunal or a member; or	14 15
(g)	without lawful excuse, disobeys a lawful order or direction of the tribunal made or given under this Act; or	16 17
(h)	does anything at a proceeding or otherwise that would be contempt of court if the tribunal were a court of record.	18 19 20
(2)	The tribunal may order that a person who contravenes subsection (1) at a proceeding be excluded from the place where the proceeding is being conducted.	21 22 23
(3)	A staff member of the tribunal or a health practitioner, acting under the tribunal's order, may, with the help that is necessary and reasonable in the circumstances, exclude the person from the place.	24 25 26 27
762	Punishment of contempt	28
(1)	Without limiting the tribunal's power under section 761, a person's contempt of the tribunal may be punished under this section.	29 30 31

-
- (2) The president may certify the contempt in writing to the Supreme Court (the *court*). 1
2
- (3) For subsection (2), it is enough for the president to be satisfied there is evidence of contempt. 3
4
- (4) The president may issue a warrant directed to a police officer or all police officers for the arrest of the person to be brought before the court to be dealt with according to law. 5
6
7
- (5) The *Bail Act 1980* applies to the proceeding for the contempt started by the certification in the same way it applies to a charge of an offence. 8
9
10
- (6) The court must inquire into the alleged contempt. 11
- (7) The court must hear— 12
- (a) witnesses and evidence that may be produced against or for the person whose contempt was certified; and 13
14
- (b) any statement given by the person in defence. 15
- (8) If the court is satisfied the person has committed the contempt, the court may punish the person as if the person had committed the contempt in relation to a proceeding in the court. 16
17
18
19
- (9) The *Uniform Civil Procedure Rules 1999* apply to the court's investigation, hearing and power to punish with necessary changes. 20
21
22
- (10) The president's certificate of contempt is evidence of the matters contained in the certificate. 23
24

763 Conduct that is contempt and offence 25

- (1) If conduct of a person is both contempt of the tribunal and an offence, the person may be proceeded against for the contempt or for the offence. 26
27
28
- (2) However, the person is not liable to be punished twice for the same conduct. 29
30

[s 764]

Division 9	Protection and immunities	1
764	Protection and immunity for members	2
	A member of the tribunal has, in the exercise of jurisdiction under this Act, the same protection and immunity as a Supreme Court judge in the performance of a judge's functions.	3 4 5 6
765	Protection and immunity for other persons	7
(1)	A lawyer or another person who, under this Act, represents a party to a proceeding has the same protection and immunity as a barrister appearing for a party in a proceeding in the Supreme Court.	8 9 10 11
(2)	A person given an attendance notice or appearing before the tribunal in a proceeding has the same protection and immunity as a witness in a proceeding in the Supreme Court.	12 13 14
(3)	A document produced to the tribunal in a proceeding has the same protection it would have if produced in the Supreme Court.	15 16 17
Division 10	Rules and practice	18
766	Rule-making power	19
(1)	The Governor in Council may make rules for the tribunal under this Act.	20 21
(2)	Rules may be made about the following matters—	22
(a)	the practices and procedures of the tribunal;	23
(b)	fees and expenses payable to witnesses;	24
(c)	fees or costs payable in relation to proceedings and the party by or to whom they are to be paid;	25 26

	(d) service of process, notices, orders or other things on parties and other persons.	1 2
	(3) Rules made under this section are rules of court.	3
767	Directions about practice	4
	(1) Subject to this Act and the tribunal rules, the practice and procedure of the tribunal are as directed by the president.	5 6
	(2) If this Act or the rules do not provide or sufficiently provide for a particular matter, an application for directions may be made to the president.	7 8 9
Division 11	Miscellaneous	10
768	Authentication of documents	11
	A document requiring authentication by the tribunal is sufficiently authenticated if it is signed by a member.	12 13
769	Judicial notice of particular signatures	14
	Judicial notice must be taken of the signature of a member if it appears on a document issued by the tribunal.	15 16
770	Delegation	17
	The president may delegate the president's powers under this Act to the deputy president or another member.	18 19
771	Register	20
	(1) The president must keep a register of—	21
	(a) applications for a review of any of the following—	22
	(i) treatment authorities;	23
	(ii) forensic orders;	24

[s 772]

(iii) treatment support orders;	1
(iv) a person’s fitness for trial;	2
(v) the detention of a minor in a high security unit; and	3
(b) applications for any of the following—	4
(i) examination authorities;	5
(ii) approval to perform regulated treatment;	6
(iii) approval of the transfer of particular persons into and out of Queensland; and	7 8
(c) reviews and applications heard by the tribunal; and	9
(d) decisions of the tribunal on the reviews and applications, and the reasons for the decisions.	10 11
(2) The president may keep the register in the way the president considers appropriate.	12 13
772 Annual report	14
(1) Within 90 days after the end of each financial year, the president must prepare and give the Minister a report on the tribunal’s operations during the year.	15 16 17
(2) The Minister must table a copy of the report in the Legislative Assembly within 14 days after the day the Minister receives it.	18 19 20
Chapter 17 Confidentiality	21
Part 1 Preliminary	22
773 Purpose of ch 17	23
The purpose of this chapter is to provide for—	24

[s 774]

-
- (a) the confidentiality of information identifying persons who have received health services for a mental illness; and
 - (b) the use and disclosure of particular personal information for particular purposes; and
 - (c) offences relating to the publication of particular judicial proceedings.

774 Definitions for ch 17

In this chapter—

designated person means a designated person under the *Hospital and Health Boards Act 2011*, section 139.

government entity means a government entity under the *Public Service Act 2008*, section 24.

personal information means—

- (a) personal information under the *Information Privacy Act 2009*, section 12; or
- (b) confidential information under the *Hospital and Health Boards Act 2011*, section 139.

775 Relationship of ch 17 with other Acts

This chapter applies to the use or disclosure of information mentioned in this chapter despite any prohibition or limitation on the use or disclosure under the *Hospital and Health Boards Act 2011*, the *Information Privacy Act 2009* or another Act.

[s 776]

Part 2	Duty of confidentiality	1
776	Confidentiality of information obtained by designated person	2 3
(1)	This section applies to each of the following—	4
(a)	the chief psychiatrist;	5
(b)	the administrator of an authorised mental health service;	6
(c)	an authorised doctor;	7
(d)	an authorised mental health practitioner;	8
(e)	a member of the staff of the tribunal or registry;	9
(f)	another designated person performing a function under this Act;	10 11
(g)	an independent patient rights adviser;	12
(h)	an inspector;	13
(i)	an authorised person.	14
(2)	The person may use or disclose personal information to perform a function under this Act.	15 16
(3)	The <i>Hospital and Health Boards Act 2011</i> , sections 142 and 143 apply in relation to an independent patient rights adviser as if a reference in the sections to a designated person included a reference to an independent patient rights adviser.	17 18 19 20
(4)	A designated person may disclose to a person mentioned in subsection (1) information that is confidential information under the <i>Hospital and Health Boards Act 2011</i> , section 139 if the disclosure is for the purpose of enabling the person to perform a function under this Act.	21 22 23 24 25
(5)	Without limiting subsection (4), a designated person may disclose personal information about a patient, including the patient’s health records and written notices given under this Act, to an independent patient rights adviser to enable the adviser to perform functions under this Act.	26 27 28 29 30

[s 777]

777	Confidentiality of information obtained by other persons	1
(1)	This section applies to a person—	2
(a)	who is or has been—	3
(i)	a member of the tribunal; or	4
(ii)	an assisting clinician; or	5
(iii)	a person representing another person at the hearing of a proceeding in the tribunal; or	6
(iv)	a support person accompanying another person at the hearing of a proceeding in the tribunal; and	7
(b)	in that capacity acquires personal information.	8
(2)	The person must not use the personal information or disclose it to anyone else.	9
	Maximum penalty—100 penalty units.	10
(3)	However, the person may use or disclose the personal information—	11
(a)	to the extent necessary to perform the person’s functions under this Act; or	12
(b)	if the use or disclosure is otherwise required or permitted by law; or	13
(c)	if the person to whom the information relates consents to the use or disclosure.	14

Part 3 **Permitted use and disclosure** 22

778	Disclosure to identify person with mental health defence	23
(1)	This section applies to an employee of the department, a Hospital and Health Service or another government entity.	24
(2)	The employee may use or disclose personal information to—	25

[s 779]

- (a) assist in the identification of a person who may have been of unsound mind at the time of an alleged offence or who may be unfit for trial; and
- (b) enable the application to the person of provisions of this Act relating to unsoundness of mind and unfitness for trial.

779 Disclosure to identify and offer support to victims

- (1) This section applies to an employee of the department, a Hospital and Health Service or another government entity.
- (2) The employee may use or disclose personal information to assist in the identification of a person who is, or may be, a victim for the purpose of offering support services to the person.
- (3) In this section—
victim means—
 - (a) a victim of an unlawful act committed by a person who has, or may have, a mental condition; or
 - (b) a close relative of a victim mentioned in paragraph (a); or
 - (c) another individual who has suffered harm because of an unlawful act mentioned in paragraph (a).

780 Disclosure for report by private psychiatrist

A designated person may disclose personal information about a patient, including the patient's health records and written notices given under this Act, if the disclosure is to assist in the preparation of a report by a psychiatrist privately engaged by the patient.

781	Disclosure of particular information relating to classified patient	1 2
(1)	This section applies if the chief psychiatrist considers a person is, or may be, any of the following—	3 4
(a)	a victim of an unlawful act committed by a person who is a classified patient;	5 6
(b)	a close relative of a victim mentioned in paragraph (a);	7
(c)	another individual who has suffered harm because of an unlawful act mentioned in paragraph (a).	8 9
(2)	The chief psychiatrist may disclose the following personal information about the classified patient to the person—	10 11
(a)	the fact that the patient is a classified patient in an authorised mental health service;	12 13
(b)	the fact, and the date, of a transfer of the patient to another authorised mental health service;	14 15
(c)	the fact that the patient has become a patient required to return, if the chief psychiatrist considers the information is relevant to the safety and welfare of the person;	16 17 18
(d)	if the patient stops being a classified patient—the fact that, and the reasons why, the patient has stopped being a classified patient.	19 20 21
(3)	The chief psychiatrist may enter into arrangements with a victim support service to enable the service, on behalf of the chief psychiatrist, to give the information to the person.	22 23 24
(4)	The person must give a written undertaking to preserve the confidentiality of the information.	25 26
(5)	The person must not contravene the undertaking.	27
	Maximum penalty for subsection (5)—200 penalty units.	28
782	Disclosure of particular information relating to person in contact with forensic disability service	29 30
(1)	This section applies for facilitating—	31

[s 783]

- (a) the transfer of a person from the forensic disability service to an authorised mental health service; and
 - (b) the transfer of a person from an authorised mental health service to the forensic disability service; and
 - (c) the provision of care to a person subject to a forensic order (disability).
- (2) The chief psychiatrist or an administrator of an authorised mental health service may disclose personal information about the person to the director of forensic disability, the administrator of the forensic disability service or another entity responsible for providing care to the person.
- (3) Also, the director of forensic disability, the administrator of the forensic disability service, or another entity responsible for providing care to the person may disclose personal information about the person to the chief psychiatrist or the administrator of an authorised mental health service.

783 Disclosure to lawyer

- (1) A designated person may disclose personal information about a patient, including the patient's health records and written notices given under this Act, to a lawyer if the disclosure is to enable the lawyer to provide legal services to the patient, or the State, for a proceeding in the Mental Health Court, the tribunal or another court.
- (2) If the lawyer is a representative of the State, the lawyer may use the personal information, or disclose it to a victim, only to the extent necessary for the performance of the lawyer's functions under this or another Act.
- (3) In this section—
- victim* means a person who is, or may be—
- (a) a victim of an unlawful act committed by a person who is the subject of a proceeding before the Mental Health Court or the tribunal; or

[s 784]

-
- (b) a close relative of a victim mentioned in paragraph (a); 1
or 2
- (c) another individual who has suffered harm because of an 3
unlawful act mentioned in paragraph (a). 4
- 784 Disclosure of photograph of patient required to return 5**
- (1) This section applies if the administrator of an authorised 6
mental health service is in possession of a photograph of a 7
person who— 8
- (a) is an involuntary patient or a classified patient 9
(voluntary); and 10
- (b) has become a patient required to return. 11
- (2) The administrator may disclose the photograph to the 12
commissioner of the police service, or another person 13
performing a function in an official capacity, to help locate the 14
person. 15
- (3) To remove any doubt, it is declared that the administrator of 16
an authorised mental health service may require an 17
involuntary patient or a classified patient (voluntary) to be 18
photographed to facilitate the future operation of subsection 19
(2). 20
- 785 Disclosure of information for research purposes 21**
- (1) The registrar of the Mental Health Court may disclose 22
relevant information about a patient to a person undertaking 23
research if— 24
- (a) the registrar is satisfied the research is genuine; and 25
- (b) the president of the Mental Health Court approves the 26
disclosure; and 27
- (c) the person gives a written undertaking to preserve the 28
confidentiality of the information. 29

-
- Maximum penalty—200 penalty units or 2 years imprisonment. 1
2
- (2) However, a person does not commit an offence against subsection (1) if the person publishes the report with the leave of the Mental Health Court or the Court of Appeal. 3
4
5
- (3) In this section— 6
- decision leading to trial*** means a decision that— 7
- (a) the person is fit for trial; or 8
- (b) the person is unfit for trial and the unfitness for trial is not permanent; or 9
10
- (c) the person was of diminished responsibility when the offence of murder was allegedly committed, if the proceeding is continued against the person for another offence constituted by the act or omission to which the offence of murder relates. 11
12
13
14
15
- end day***, in relation to a decision leading to trial, means— 16
- (a) the day the trial for the relevant offence ends; or 17
- (b) for a decision mentioned in paragraph (b) of the definition *decision leading to trial*, if the proceeding for the relevant offence is discontinued under chapter 12, part 6, division 2—the day the proceeding is discontinued. 18
19
20
21
22
- prescribed day*** means— 23
- (a) for a decision of the Mental Health Court that is a decision leading to trial—the end day; or 24
25
- (b) for a decision of the Mental Health Court other than a decision leading to trial— 26
27
- (i) if an appeal to the Court of Appeal against the decision is started within 28 days after the date of the decision and the appeal is not withdrawn— 28
29
30
- (A) if the Court of Appeal makes a decision leading to trial—the end day; or 31
32

[s 787]

- | | | |
|-------|--|----------------------------|
| (B) | if the Court of Appeal returns the matter to the Mental Health Court and the Mental Health Court makes a decision other than a decision leading to trial—the day that is 28 days after the date of the Mental Health Court’s decision; or | 1
2
3
4
5
6 |
| (C) | otherwise—the day that is 28 days after the date of the Court of Appeal’s decision; or | 7
8 |
| (ii) | if an appeal to the Court of Appeal against the decision is started within the 28 days but is later withdrawn—the day that is 28 days after the date of the Mental Health Court’s decision; or | 9
10
11
12 |
| (iii) | if an appeal to the Court of Appeal against the decision is not started within the 28 days but within that time the person elects to be brought to trial for the offence—the day the trial for the offence ends; or | 13
14
15
16
17 |
| (iv) | otherwise—the day that is 28 days after the date of the Mental Health Court’s decision. | 18
19 |
| | <i>Examples of a decision of the Mental Health Court for paragraph (b)—</i> | 20
21 |
| | <ul style="list-style-type: none">• a decision made under section 116 that the person was of unsound mind when the offence was allegedly committed• a decision made under section 118 that the person is unfit for trial and the unfitness for trial is permanent | 22
23
24
25 |
| | <i>relevant offence</i> means— | 26 |
| (a) | the offence to which the reference relates; or | 27 |
| (b) | if the reference relates to the offence of murder and the person was of diminished responsibility when the offence was allegedly committed—another offence constituted by the act or omission to which the offence of murder relates. | 28
29
30
31
32 |

788	Publication of report of other proceedings	1
(1)	A person must not publish a report of a proceeding of—	2
(a)	the tribunal; or	3
(b)	the Mental Health Court relating to an appeal against a decision of the tribunal; or	4 5
(c)	the Mental Health Court relating to a review under section 671.	6 7
	Maximum penalty—200 penalty units or 2 years imprisonment.	8 9
(2)	However, a person does not commit an offence against subsection (1) if the person publishes the report with the leave of the tribunal or the Mental Health Court.	10 11 12
(3)	The tribunal or the Mental Health Court may grant leave to publish the report only if it is satisfied—	13 14
(a)	publication of the report is in the public interest; and	15
(b)	the report does not contain information that identifies, or is likely to identify—	16 17
(i)	the person the subject of the proceeding; or	18
(ii)	a person who appears as a witness before the tribunal or court in the proceeding; or	19 20
(iii)	a person mentioned or otherwise involved in the proceeding.	21 22
789	Publication of information disclosing identity of party to proceeding	23 24
(1)	A person must not publish information that identifies, or is likely to lead to the identification of, a minor who is or has been a party to a proceeding under this Act in the tribunal, Mental Health Court or Court of Appeal.	25 26 27 28
	Maximum penalty—200 penalty units or 2 years imprisonment.	29 30

[s 790]

(2)	A person must not publish information that identifies, or is likely to lead to the identification of, a person other than a minor who is or has been a party to a proceeding mentioned in section 788(1).	1 2 3 4
	Maximum penalty—200 penalty units or 2 years imprisonment.	5 6
(3)	However, a person does not commit an offence against subsection (2) if the person publishes the information with the leave of the tribunal, the Mental Health Court or the Court of Appeal.	7 8 9 10
(4)	The tribunal, Mental Health Court or Court of Appeal may grant leave to publish the information only if it is satisfied—	11 12
(a)	the publication is necessary to assist in lessening or preventing a serious risk to—	13 14
(i)	the life, health or safety of a person, including the person to whom the information relates; or	15 16
(ii)	public safety; or	17
(b)	the publication is in the public interest.	18
790	Publication of date of hearing permitted	19
	Nothing in this part prevents the disclosure of a date, or time, of a hearing to be held in the Mental Health Court.	20 21
791	Publication of information disclosed at hearing permitted	22
	Subject to sections 787, 788 and 789, nothing in this part prevents the disclosure of information disclosed in a hearing of the Mental Health Court.	23 24 25
	<i>Note—</i>	26
	For provisions other than in this part that prohibit the disclosure of information disclosed in a hearing of the Mental Health Court, see, for example, sections 164 and 694.	27 28 29

Chapter 18	General provisions	1
792	Detention of involuntary patient must be in inpatient unit	2
	If an involuntary patient is detained under this Act in an authorised mental health service, the involuntary patient must be detained in an inpatient unit of the service.	3 4 5
793	Use of audiovisual link for examination or assessment	6
	An examination or assessment under this Act may be done by an audiovisual link, if the person making the examination or assessment considers it is clinically appropriate.	7 8 9
794	Disclosure by QCAT of information about personal guardian	10 11
(1)	This section applies to the following (each a <i>QCAT official</i>)—	12
(a)	a member of QCAT;	13
(b)	the principal registrar or a registrar under the QCAT Act or another member of the administrative staff of the registry under that Act;	14 15 16
(c)	an adjudicator or assessor appointed under the QCAT Act.	17 18
(2)	If requested by the executive officer of the tribunal, or an employee of the department or a Hospital and Health Service who is involved in the administration of this Act, the QCAT official may disclose to the registrar, or the employee, the following information—	19 20 21 22 23
(a)	whether a personal guardian has been appointed for a stated individual;	24 25
(b)	if a personal guardian has been appointed—the name and contact details of the personal guardian.	26 27
(3)	The QCAT official may disclose the information despite any other law that would otherwise prohibit or restrict the disclosure of the information.	28 29 30

[s 795]

795	Protection of official from liability	1
(1)	An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.	2 3 4
(2)	If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.	5 6
(3)	This section does not apply to an official if the official is a State employee within the meaning of the <i>Public Service Act 2008</i> , section 26B(4).	7 8 9
(4)	In this section—	10
	<i>official</i> means—	11
(a)	the Minister; or	12
(b)	the administrator of an authorised mental health service; or	13 14
(c)	an authorised doctor; or	15
(d)	an authorised mental health practitioner; or	16
(e)	an inspector; or	17
(f)	an authorised person; or	18
(g)	a person acting under the direction of a person mentioned in paragraphs (a) to (f).	19 20
796	Approved forms	21
(1)	The president of the Mental Health Court may approve, for this Act, forms for use by or in the Mental Health Court.	22 23
(2)	The president of the tribunal may approve, for this Act, forms for use by or in the tribunal.	24 25
(3)	The chief psychiatrist may approve, for this Act, forms for use in circumstances not mentioned in subsection (1) or (2).	26 27

797	Electronic format for notices and other information	1
(1)	This section applies if, under this Act, a person is required or permitted to—	2 3
(a)	give a written notice or other information to another person; or	4 5
(b)	record information.	6
(2)	The person may give the written notice or other information, or record the information, electronically.	7 8
(3)	The written notice or other information is given electronically if it is given—	9 10
(a)	in an electronic format, and in a way, approved by the chief psychiatrist; or	11 12
(b)	under the <i>Electronic Transactions (Queensland) Act 2001</i> .	13 14
	<i>Note—</i>	15
	Under the <i>Electronic Transactions (Queensland) Act 2001</i> , the person to whom the information is required or permitted to be given must consent to the information being given by an electronic communication. See sections 11(2) and 12(2) of that Act.	16 17 18 19
(4)	The information is recorded electronically if it is recorded in an electronic format, and in a way, approved by the chief psychiatrist.	20 21 22
(5)	Also, a requirement for a written notice or other information to be given to a person, or information to be recorded, in an approved form is complied with if the information required in the approved form is given under subsection (3) or recorded under subsection (4).	23 24 25 26 27
(6)	To remove any doubt, it is declared that the chief psychiatrist may approve under subsection (3) or (4) an electronic format that combines 1 or more approved forms, or is designed to be used for 1 or more related purposes.	28 29 30 31

[s 798]

798	Regulation-making power	1
	The Governor in Council may make regulations under this Act.	2 3
Chapter 19	Repeal	4
799	Repeal	5
	The Mental Health Act 2000, No. 16 is repealed.	6
Chapter 20	Transitional provisions	7
Part 1	Preliminary	8
800	Definitions for ch 20	9
	In this chapter—	10
	<i>commencement</i> means the commencement of this chapter.	11
	<i>new Act</i> means this Act.	12
	<i>repealed Act</i> means the repealed <i>Mental Health Act 2000</i> .	13
801	Application of new Act in relation to proceedings for alleged offences	14 15
	(1) To the extent a provision of the new Act relates to a proceeding for an alleged offence, the new Act applies if a proceeding is started after the commencement.	16 17 18
	(2) For subsection (1), it is irrelevant whether the offence is alleged to have been committed before or after the commencement.	19 20 21

	(3) To the extent subsection (1) is inconsistent with any other provision of this chapter, the other provision prevails.	1 2
802	Detention under repealed Act	3
	(1) A person detained or remanded in custody under the repealed Act immediately before the commencement is taken to be detained or remanded in custody under the new Act and may be dealt with under the new Act.	4 5 6 7
	(2) To the extent subsection (1) is inconsistent with any other provision of this chapter, the other provision prevails.	8 9
Part 2	Provisions about assessment and detention under chapters 2 and 3 of repealed Act	10 11 12
803	Assessment documents	13
	(1) A request for assessment in force under the repealed Act immediately before the commencement stops having effect on the commencement.	14 15 16
	(2) A recommendation for assessment in force under the repealed Act immediately before the commencement—	17 18
	(a) is taken to be a recommendation for assessment under the new Act; and	19 20
	(b) remains in force for 7 days after it was made under the repealed Act.	21 22
804	Persons subject to assessment documents	23
	(1) This section applies if, immediately before the commencement, a person for whom assessment documents	24 25

[s 805]

were in force under the repealed Act was being taken under that Act to a place.	1 2
(2) The repealed Act continues to apply in relation to the taking of the person as if that Act had not been repealed.	3 4
805 Justices examination order	5
(1) An application for a justices examination order made under the repealed Act but not decided before the commencement may be heard, or continue to be heard, and dealt with under that Act as if it had not been repealed.	6 7 8 9
(2) A justices examination order in force under the repealed Act immediately before the commencement continues in force for the period it would have been in force under that Act.	10 11 12
(3) For the purposes of a justices examination order made because of the application of subsection (1) or mentioned in subsection (2), the repealed Act, chapter 2, part 3, division 2 continues to apply as if the new Act had not commenced.	13 14 15 16
(4) On examination of a person under the repealed Act as applied under subsection (3), a doctor or authorised mental health practitioner may, under the new Act, decide to make a recommendation for assessment for the person.	17 18 19 20
(5) The recommendation for assessment is a recommendation for assessment made under the new Act, section 39.	21 22
806 Emergency examination order	23
(1) Subsections (2) to (4) apply if, immediately before the commencement, a police officer or an ambulance officer was taking a person to an authorised mental health service under the repealed Act, section 34.	24 25 26 27
(2) The repealed Act, sections 35 and 36 continue to apply in relation to the persons mentioned in subsection (1) as if the new Act had not commenced.	28 29 30

-
- (3) On examination of a person under the repealed Act as applied under subsection (2), a doctor or authorised mental health practitioner may, under the new Act, decide to make a recommendation for assessment for the person. 1
2
3
4
- (4) The recommendation for assessment is a recommendation for assessment made under the new Act, section 39. 5
6
- (5) Subsections (6) to (8) apply if, immediately before the commencement, a person— 7
8
- (a) was being taken to an authorised mental health service under the repealed Act, section 39 by a psychiatrist, police officer or ambulance officer; or 9
10
11
- (b) was being detained in an authorised mental health service under the repealed Act, section 40. 12
13
- (6) The repealed Act, sections 39 and 40 continue to apply in relation to the persons mentioned in subsection (5). 14
15
- (7) On examination of a person under the repealed Act as applied under subsection (6), a doctor or authorised mental health practitioner may, under the new Act, decide to make a recommendation for assessment for the person. 16
17
18
19
- (8) The recommendation for assessment is a recommendation for assessment made under the new Act, section 39. 20
21
- (9) The repealed Act, section 41 continues to apply in relation to a person the subject of an examination mentioned in this section. 22
23
24
- 807 Detention for assessment** 25
- (1) This section applies if, immediately before the commencement— 26
27
- (a) a person was detained in an authorised mental health service for assessment under the repealed Act, section 44; and 28
29
30
- (b) the assessment period for the person under that Act had not ended; and 31
32

[s 808]

(c)	an assessment of the person under that Act had not been made.	1 2
(2)	The person is taken to be detained for assessment, and may be dealt with, under the new Act.	3 4
(3)	The assessment period for the person under the new Act is taken to have started when the person's assessment period started under the repealed Act, and may be extended in compliance with the new Act.	5 6 7 8
808	Agreement for assessment	9
(1)	This section applies to an agreement for assessment under the repealed Act—	10 11
(a)	for a person's assessment at an authorised mental health service; and	12 13
(b)	that was in force immediately before the commencement.	14 15
(2)	For the new Act, the agreement for assessment is taken to be an administrator consent under the new Act for the person's transport to an authorised mental health service.	16 17 18
(3)	If the person has not been taken for assessment to the authorised mental health service within 72 hours from the commencement, a doctor or authorised mental health practitioner must give written notice to the chief psychiatrist of that fact.	19 20 21 22 23
809	Custodian's assessment authority	24
	A custodian's assessment authority under the repealed Act is taken to be a custodian consent under the new Act for the person subject to the authority.	25 26 27
810	Taking person to authorised mental health service	28
(1)	This section applies if, immediately before the commencement—	29 30

-
- (a) a recommendation for assessment and a custodian's assessment authority under the repealed Act were in force for a person; and
- (b) the person had not been taken to an authorised mental health service, under the recommendation and authority, for assessment.
- (2) For the purposes of the new Act, the person may be transported to the authorised mental health service under the recommendation and authority.
- 811 Classified patients**
- (1) A classified patient under the repealed Act immediately before the commencement is taken to be a classified patient under the new Act.
- (2) A classified patient who consented to being treated and was at an authorised mental health service immediately before the commencement is taken to be a classified patient (voluntary).
- 812 Report of authorised doctor**
- (1) This section applies if—
- (a) under the repealed Act, section 74, an authorised doctor had given the director a report about a patient; and
- (b) the director had not considered the report under the repealed Act, section 83 by the commencement.
- (2) The report is taken to be a notice received by the chief psychiatrist under the new Act, section 82 and the chief psychiatrist must deal with the notice under that section.
- 813 Involuntary treatment orders**
- (1) An involuntary treatment order under the repealed Act that was in force immediately before the commencement is taken to be a treatment authority under the new Act.

[s 813]

- | | | |
|-----|---|----------------------------|
| (2) | On the commencement— | 1 |
| (a) | the category of the treatment authority is the category of the involuntary treatment order; and | 2
3 |
| (b) | the new Act applies in relation to the category of the treatment authority as if the authority had been made under the new Act. | 4
5
6 |
| (3) | Any conditions of the involuntary treatment order, including conditions about limited community treatment, are taken to be conditions of the treatment authority. | 7
8
9 |
| (4) | Subject to section 816, if, under the repealed Act and immediately before the commencement, limited community treatment was authorised under the involuntary treatment order by an authorised doctor, the limited community treatment is taken to be authorised under the new Act. | 10
11
12
13
14 |
| (5) | If, immediately before the commencement, the person subject to the involuntary treatment order had not been examined under the repealed Act, section 112 by an authorised psychiatrist, an authorised psychiatrist must review the treatment authority under the new Act, section 56. | 15
16
17
18
19 |
| (6) | If, immediately before the commencement, notice of the making of the involuntary treatment order had not been given under the repealed Act, section 113, notice must be given in accordance with the new Act, section 55. | 20
21
22
23 |
| (7) | An assessment of the person subject to the treatment authority must be made under the new Act, section 205 within 3 months after the commencement. | 24
25
26 |
| (8) | Without limiting subsections (2) to (7)— | 27 |
| (a) | for the purposes of the new Act, the treatment authority is taken to have been made when the involuntary treatment order was made under the repealed Act; and | 28
29
30 |
| (b) | the new Act applies in relation to the treatment authority as if it were made under the new Act. | 31
32 |
| (9) | To remove any doubt, it is declared that the person subject to the involuntary treatment order is taken to have been subject | 33
34 |

[s 816]

- 816 Limited community treatment** 1
- (1) This section applies if, immediately before the commencement, limited community treatment was authorised for a patient by an authorised doctor under the repealed Act, section 129 or 131. 2
3
4
5
- (2) The limited community treatment is taken to have been authorised under the new Act, chapter 7. 6
7
- (3) If the limited community treatment was authorised under the repealed Act, section 129 or 131 subject to conditions, the conditions are taken to have been imposed under the new Act, chapter 7. 8
9
10
11
- 817 Monitoring conditions** 12
- (1) This section applies if, immediately before the commencement, a patient was subject to a monitoring condition imposed under the repealed Act, section 131A. 13
14
15
- (2) If the patient was a forensic patient, the monitoring condition is taken to have been imposed under the new Act for the same period and on the same conditions. 16
17
18
- (3) However, if the monitoring condition required the person to wear a tracking device, the monitoring condition stops having effect on the commencement. 19
20
21
- (4) If the patient was not a forensic patient, the monitoring condition stops having effect on the commencement. 22
23

Part 5	Provisions about electroconvulsive therapy under chapter 4 of repealed Act	1 2 3
818	Consent to electroconvulsive therapy	4
(1)	This section applies if, immediately before the commencement, a patient had given informed consent to electroconvulsive therapy under the repealed Act, section 139.	5 6 7
(2)	The consent is taken to have been given under the new Act, chapter 7, part 9.	8 9
819	Emergency electroconvulsive therapy	10
(1)	This section applies if, immediately before the commencement, a certificate under the repealed Act, section 140 for emergency electroconvulsive therapy was in force.	11 12 13
(2)	The certificate is taken to have been given under the new Act, section 236(3).	14 15
Part 6	Provisions about movement, transfer and temporary absence of patients under chapter 5 of repealed Act	16 17 18 19
820	Move of patients interstate	20
(1)	If, immediately before the commencement, the tribunal had approved the move to another State of a person subject to a forensic order—	21 22 23
(a)	the person is taken to have been transferred to the other State under the new Act, chapter 12; and	24 25

- (b) to remove any doubt, it is declared that, for the new Act, section 526(3)(b), the 3-year period includes any period before the commencement for which the person was out of Queensland. 1
2
3
4
- (2) If an application for approval of a move of a person to an interstate mental health service was made under the repealed Act, section 171 but not decided before the commencement, the application may continue to be heard under the repealed Act as if the new Act had not commenced. 5
6
7
8
9
- (3) If the application is approved, the move is taken to be a transfer approved under the new Act, chapter 12, part 10, division 2. 10
11
12
- Note—* 13
- See the new Act, section 526 in relation to the effect of a transfer on a person's forensic order (mental health), forensic order (disability) or treatment support order. 14
15
16

821 Temporary absences 17

- (1) This section applies if, immediately before the commencement, the director under the repealed Act had approved a temporary absence under the repealed Act, section 186. 18
19
20
21
- (2) The temporary absence is taken to be approved by the chief psychiatrist under the new Act, chapter 7 for the same period and on the same conditions. 22
23
24

Part 7	Provisions about tribunal reviews under chapter 6 of repealed Act	1 2 3
Division 1	Orders and decisions made before commencement	4 5
822	Particular orders and decisions not given effect before commencement	6 7
(1)	This section applies if—	8
(a)	any of the following was made by the tribunal before the commencement—	9 10
(i)	an order under the repealed Act, section 191(2)(c) or 203(2)(d) to transfer a patient from 1 authorised mental health service to another;	11 12 13
(ii)	a decision under the repealed Act, section 197(1)(b) that a young patient be transferred from a high security unit to an authorised mental health service that was not a high security unit; and	14 15 16 17
(b)	immediately before the commencement, the order or decision had not been given effect.	18 19
(2)	The order or decision must be given effect under the repealed Act as if the new Act had not commenced.	20 21
823	Particular decisions unaffected by new Act	22
(1)	This section applies to any of the following decisions made by the tribunal before the commencement—	23 24
(a)	a decision under the repealed Act, section 212 about a person’s fitness for trial;	25 26
(b)	a decision under the repealed Act, section 233 to approve—	27 28

[s 824]

- (i) an application for approval to administer electroconvulsive therapy on a person; or 1
2
 - (ii) an application for approval to perform psychosurgery that is a non-ablative neurosurgical procedure. 3
4
5
- (2) The decision continues in effect and is not affected by the commencement of the new Act. 6
7

Division 2 Reviews and applications not completed before commencement 8 9

824 Existing applications to tribunal 10

- (1) Subsection (2) applies if any of the following applications was made under the repealed Act, chapter 6 but not decided before the commencement— 11
12
13
- (a) an application for a review; 14
 - (b) an application for approval to administer electroconvulsive therapy on a person; 15
16
 - (c) an application for approval to perform psychosurgery that is a non-ablative neurosurgical procedure. 17
18
- (2) The review or application may be heard, or continue to be heard, and dealt with under the repealed Act as if the new Act had not commenced. 19
20
21
- (3) However, the repealed Act, chapter 6, part 5A does not apply. 22
- (4) If— 23
- (a) an application for approval to perform psychosurgery was made under the repealed Act, chapter 6 but not decided before the commencement; and 24
25
26
 - (b) the application was not an application mentioned in subsection (1)(c); 27
28
- on the commencement, the application lapses. 29

825	Existing reviews started other than by an application	1
(1)	This section applies if a following review was started under the repealed Act but not decided before the commencement—	2 3
(a)	a periodic review or review on the tribunal’s initiative under chapter 6, part 1 of the application of the treatment criteria to a patient for whom an involuntary treatment order was in force;	4 5 6 7
(b)	a periodic review or review on the tribunal’s initiative under chapter 6, part 2 of the detention of a young patient in a high security unit for treatment or care;	8 9 10
(c)	a periodic review or review on the tribunal’s initiative under chapter 6, part 3 of a forensic patient’s mental condition;	11 12 13
(d)	a periodic review or review on the tribunal’s initiative under chapter 6, part 4 of the mental condition of a person charged with a relevant offence.	14 15 16
(2)	The review may be heard, or continue to be heard, and dealt with under the repealed Act as if the new Act had not commenced.	17 18 19
(3)	However, the repealed Act, chapter 6, part 5A does not apply for the purposes of the review.	20 21
(4)	On a review mentioned in subsection (1)(c), if the tribunal confirms the forensic order for the patient, the tribunal must consider each of the following for the purposes of the new Act—	22 23 24 25
(a)	whether to change the category of the forensic order (mental health) or forensic order (disability) to which the person is subject under section 834 or 835;	26 27 28
(b)	whether to order or approve, or revoke an existing order or approval for, limited community treatment;	29 30
(c)	whether the conditions to which the order is subject remain appropriate.	31 32
(5)	Subsection (4) does not limit the repealed Act, section 203.	33

[s 826]

(6)	In this section	1
	<i>periodic review</i> means a review under the repealed Act,	2
	section 187(1)(a), 194(1)(a), 200(1)(a) or 209(1).	3
826	Effect of tribunal's decision on existing review	4
(1)	A decision made by the tribunal on a review dealt with under the repealed Act as continued in effect under this division has effect for the new Act as if the decision were made under the new Act.	5 6 7 8
(2)	For subsection (1), the decision takes effect under the new Act—	9 10
(a)	if the decision was made under the repealed Act, chapter 6, part 1—in relation to the treatment authority taken to be made for the person under this part; or	11 12 13
(b)	if the decision was made under the repealed Act, chapter 6, part 3—in relation to the forensic order (mental health) or forensic order (disability) taken to be made for the person under this part.	14 15 16 17
(3)	A decision by the tribunal on an application for an approval mentioned in section 824(1)(b) or (c) is taken to have been made under the new Act, chapter 12, part 9.	18 19 20
(4)	This section is subject to section 828.	21
Division 3	Other provisions	22
827	When first periodic review under new Act must be conducted	23 24
(1)	This section provides for when a periodic review must be conducted by the tribunal under the new Act, if the matter to be reviewed arose under the repealed Act.	25 26 27

- (2) The first periodic review must be conducted under the new Act as follows—

1
2

Type of review under new Act	Section of new Act under which first periodic review must be conducted	When first periodic review under new Act must be conducted
-------------------------------------	---	---

Treatment authority taken to be made for person under s 813

- | | | |
|---|-------------|---|
| (a) if no corresponding review conducted under repealed Act | s 411(1)(a) | 6 weeks after treatment authority was taken to be made |
| (b) if 1 corresponding review conducted under repealed Act | s 411(1)(b) | 6 months after last periodic review of corresponding matter under repealed Act was completed |
| (c) if 2 corresponding reviews conducted under repealed Act | s 411(1)(c) | 6 months after last periodic review of corresponding matter under repealed Act was completed |
| (d) if 3 or more corresponding reviews conducted under repealed Act | s 411(1)(d) | 12 months after last periodic review of corresponding matter under repealed Act was completed |

Detention of a minor in a high security unit (detention started before commencement)

- | | | |
|---|-------------|--|
| (a) if no corresponding review conducted under repealed Act | s 497(1)(a) | 7 days after the detention started |
| (b) if 1 or more corresponding reviews conducted under repealed Act | s 497(1)(b) | 3 months after last periodic review of corresponding matter under repealed Act was completed |

[s 827]

Type of review under new Act	Section of new Act under which first periodic review must be conducted	When first periodic review under new Act must be conducted
------------------------------	--	--

Forensic order (mental health) or forensic order (disability) taken to have been made under s 834 or 835

(a) if no corresponding review conducted under repealed Act	s 431(1)(a)	6 months after order taken to have been made
(b) if 1 or more corresponding reviews conducted under repealed Act	s 431(1)(b)	6 months after last periodic review of corresponding matter under repealed Act was completed

Person’s fitness for trial—relevant court decision or jury finding made before commencement

(a) if no corresponding review conducted under repealed Act	s 484(1)(a)	3 months from the day of the relevant court decision or jury finding
(b) if 1 or more corresponding reviews conducted under repealed Act	s 484(1)(b)	(a) during the year starting on the day of the relevant court decision or jury finding—3 months after last periodic review of corresponding matter under repealed Act was completed (b) after the period mentioned in paragraph (a)—6 months after last periodic review of corresponding matter under repealed Act was completed

- (3) In this section—
- corresponding review*, under the repealed Act for a review under the new Act, means—
- (a) for a review under the new Act of a treatment authority taken to be made for a person under section 813—a periodic review of the application of the treatment criteria to the person for whom an involuntary treatment

-
- order was in force under the repealed Act, chapter 6, part 1; or 1
2
- (b) for a review under the new Act of the detention of a minor in a high security unit—a periodic review of the detention of a young patient in a high security unit for treatment or care under the repealed Act, chapter 6, part 2; or 3
4
5
6
7
- (c) for a review under the new Act of a forensic order (mental health) or forensic order (disability) taken to be made for a person under section 834 or 835—a periodic review of the forensic patient’s mental condition under the repealed Act, chapter 6, part 3; or 8
9
10
11
12
- (d) for a review under the new Act of a person’s fitness for trial—a periodic review of the person’s mental condition under the repealed Act, chapter 6, part 4. 13
14
15
- periodic review*, under the repealed Act, means a review under the repealed Act, section 187(1)(a), 194(1)(a), 200(1)(a) or 209(1)(a). 16
17
18
- relevant court decision or jury finding*, for a review of a person’s fitness for trial, means— 19
20
- (a) the decision made by the Mental Health Court under the repealed Act that the person was unfit for trial and the unfitness for trial was not of a permanent nature; or 21
22
23
- (b) the jury’s section 613 or 645 finding within the meaning of the repealed Act in relation to the person. 24
25
- 828 Discontinuing proceeding for offence following review of fitness for trial** 26
27
- (1) This section applies if— 28
- (a) before the commencement on a reference under the repealed Act the Mental Health Court decided a person was unfit for trial and the unfitness for trial was not of a permanent nature; and 29
30
31
32

[s 829]

(b)	the proceeding against the person for the offence was not discontinued or the person had not been found fit for trial.	1 2 3
(2)	For a review of the person's fitness for trial under the new Act, if the tribunal decides the person is unfit for trial, chapter 12, part 6, division 2, applies as if—	4 5 6
(a)	the decision of Mental Health Court mentioned in subsection (1)(a) were the finding of unfitness in relation to the person; and	7 8 9
(b)	a period mentioned in the repealed Act, section 215(3)(a) or (b) were a period that must be disregarded under the new Act, section 489(3).	10 11 12
829	Non-contact order ends	13
	A non-contact order made under the repealed Act and in effect immediately before the commencement stops having effect on the commencement.	14 15 16
Part 8	Provisions about examinations, references and orders under chapter 7 of repealed Act	17 18 19
Division 1	Examinations under chapter 7, part 2 of repealed Act	20 21
830	Making of reference under repealed Act by director or director of public prosecutions	22 23
(1)	This section applies if—	24

-
- (a) before the commencement, the director was satisfied the repealed Act, chapter 7, part 2 applied to an involuntary patient; and
- (b) immediately before the commencement, the director had not under the repealed Act, section 240(1) referred the matter of the patient's mental condition relating to the offence with which the patient was charged to the Mental Health Court or director of public prosecutions.
- (2) The repealed Act, chapter 7, parts 1 to 3 continues to apply, as if the new Act had not commenced.
- (3) A reference made to the Mental Health Court under the repealed Act, section 240 or 247 as applied by this section is taken to have been made under the new Act.

Division 2 References 14

831 Application of div 2 15

This division applies if— 16

- (a) before the commencement, a reference of a person's mental condition was made to the Mental Health Court under the repealed Act; and 17
18
19
- (b) immediately before the commencement, the reference had not been decided by the court. 20
21

832 Hearing of reference continues under repealed Act 22

- (1) The reference may be heard, or continue to be heard, and dealt with under the repealed Act as if the new Act had not commenced. 23
24
25

Note— 26

See also section 856 in relation to suspension of the proceeding against the person for the unlawful act to which the reference relates. 27
28

[s 833]

(2)	A decision or order made by the court under the repealed Act, chapter 7, part 6 is taken to have been made under the new Act, chapter 5.	1 2 3
(3)	Without limiting subsection (2)—	4
(a)	an order made by the court under the repealed Act, section 273 is taken to have been made under the new Act, section 124; and	5 6 7
(b)	limited community treatment approved for the patient by the court under the repealed Act, section 275 is taken to be approved under the new Act.	8 9 10
(4)	Despite subsection (1), the repealed Act, sections 278 and 279 do not apply if the court orders the detention of the patient in an authorised mental health service.	11 12 13
(5)	If the proceeding for the offence alleged to have been committed by the person is stayed under the repealed Act, section 280, the stay ends in accordance with the new Act.	14 15 16
833	Appeal against Mental Health Court’s decision	17
(1)	An appeal against a decision of the Mental Health Court on the reference may be started under the repealed Act, chapter 8, part 2.	18 19 20
(2)	The Court of Appeal may hear and decide the appeal under the repealed Act as if the new Act had not commenced.	21 22
Division 3	Forensic orders (Mental Health Court) and forensic orders (Mental Health Court—Disability)	23 24 25
834	Forensic order (Mental Health Court)	26
(1)	This section applies to a forensic order (Mental Health Court) under the repealed Act that—	27 28
(a)	was in force immediately before the commencement; or	29

(b)	is made after the commencement under this chapter.	1
(2)	The order is taken to be a forensic order (mental health) under the new Act.	2 3
(3)	On the commencement or relevant start day—	4
(a)	the category of the forensic order (mental health) is inpatient; and	5 6
(b)	the new Act applies in relation to the category of the forensic order (mental health) as if the order had been made under the new Act.	7 8 9
(4)	Any conditions of the forensic order (Mental Health Court), including a non-contact condition, are taken to be conditions of the forensic order (mental health).	10 11 12
(5)	Without limiting subsections (1) to (4)—	13
(a)	for the purposes of the new Act, the forensic order (mental health) is taken to have been made when the forensic order (Mental Health Court) was or is made under the repealed Act; and	14 15 16 17
(b)	the new Act applies in relation to the forensic order (mental health) as if it were made under the new Act.	18 19
(6)	To remove any doubt, it is declared that the person subject to the forensic order (Mental Health Court) is taken to have been subject to the forensic order (mental health) for any period during which the person was subject to the forensic order (Mental Health Court).	20 21 22 23 24
(7)	In this section—	25
	<i>relevant start day</i> , for a forensic order (mental health) taken to have been made after the commencement under this chapter, means the day the order is taken to have been made.	26 27 28
835	Forensic order (Mental Health Court—Disability)	29
(1)	This section applies to a forensic order (Mental Health Court—Disability) under the repealed Act that—	30 31

- (a) was in force immediately before the commencement; or 1
 - (b) is made after the commencement under this chapter. 2
- (2) The order is taken to be a forensic order (disability) under the new Act. 3
4
- (3) On the commencement or relevant start day— 5
 - (a) the category of the forensic order (disability) is inpatient; and 6
7
 - (b) the new Act applies in relation to the category of the forensic order (disability) as if the order had been made under the new Act. 8
9
10
- (4) Any conditions of the forensic order (Mental Health Court—Disability), including a non-contact condition, are taken to be conditions of the forensic order (disability). 11
12
13
- (5) Without limiting subsections (1) to (4)— 14
 - (a) for the purposes of the new Act, the forensic order (disability) is taken to have been made when the forensic order (Mental Health Court—Disability) was made under the repealed Act; and 15
16
17
18
 - (b) the new Act applies in relation to the forensic order (disability) as if it were made under the new Act. 19
20
- (6) To remove any doubt, it is declared that the person subject to the forensic order (Mental Health Court—Disability) is taken to have been subject to the forensic order (disability) for any period during which the person was subject to the forensic order (Mental Health Court—Disability). 21
22
23
24
25
- (7) In this section— 26
 - relevant start day*, for a forensic order (disability) taken to have been made after the commencement under this chapter, means the day the order is taken to have been made. 27
28
29

-
- 836 Limited community treatment for forensic patient** 1
- (1) This section applies to a forensic order (mental health) or 2
forensic order (disability) taken to have been made for a 3
person under this division. 4
- (2) If, under the repealed Act, limited community treatment for 5
the person was ordered or approved by the Mental Health 6
Court or the tribunal, or authorised by an authorised doctor— 7
- (a) the limited community treatment is taken to be ordered 8
or approved, or authorised, under the new Act; and 9
- (b) the nature and extent of the limited community 10
treatment continues unaffected by the commencement 11
of the new Act. 12
- (3) If the limited community treatment was authorised under the 13
repealed Act by an authorised doctor, the authorisation may 14
be amended or revoked by an authorised doctor under the 15
repealed Act as if the new Act had not commenced. 16
- (4) However, subsection (3) does not apply if the forensic order 17
(mental health) or forensic order (disability) has been 18
reviewed under the new Act. 19
- 837 Review of forensic order under new Act** 20
- (1) This section applies to a forensic order (mental health) or 21
forensic order (disability) taken to have been made for a 22
person under this division. 23
- (2) When the tribunal first reviews the order under the new Act, 24
chapter 12, the tribunal must, if it confirms the order, consider 25
the following— 26
- (a) whether the category of the order should be— 27
- (i) inpatient; or 28
- (ii) community; 29
- (b) whether to order or approve, or revoke an existing order 30
or approval for, limited community treatment; 31
-

- (c) whether the conditions to which the order is subject 1
remain appropriate. 2
- (3) This section does not limit the powers of the tribunal under 3
the new Act, chapter 12, part 3. 4

Division 4 Other provisions 5

838 Order approving interstate transfer under s 288B of 6 repealed Act 7

- (1) This section applies if, before the commencement under a 8
forensic order (Mental Health Court) or forensic order 9
(Mental Health Court—Disability), the Mental Health Court 10
approved a patient move out of Queensland. 11
- (2) On the commencement, the approval is taken to be an 12
approval for the transfer of the patient given under the new 13
Act, chapter 12, part 10, division 2. 14
- (3) To remove any doubt, it is declared that, for the new Act, 15
section 526(3)(b), the 3-year period includes any period 16
before the commencement for which the person was out of 17
Queensland. 18

Note— 19

See the new Act, section 526 in relation to the effect of a transfer on a 20
person's forensic order (mental health), forensic order (disability) or 21
treatment support order. 22

839 Forensic order (Criminal Code) 23

To remove any doubt, it is declared that the new Act applies in 24
relation to a forensic order (Criminal Code) within the 25
meaning of the repealed Act that was made before the 26
commencement. 27

840	Custody order	1
(1)	This section applies if a custody order was in effect under the repealed Act immediately before the commencement.	2 3
(2)	The repealed Act, chapter 7, part 7, division 2, subdivision 3 continues to apply in relation to the custody order.	4 5
841	Forensic order (Minister)	6
(1)	This section applies if a forensic order (Minister) is—	7
(a)	in effect for a person immediately before the commencement; or	8 9
(b)	made under the repealed Act, chapter 7, part 7, division 2, subdivision 3 as continued in effect under section 840(2).	10 11 12
(2)	From the commencement or relevant start day, the order is taken to be a forensic order (mental health) under the new Act.	13 14
(3)	On the commencement or relevant start day—	15
(a)	the category of the forensic order (mental health) is inpatient; and	16 17
(b)	the new Act applies in relation to the category of the forensic order (mental health) as if the order had been made under the new Act.	18 19 20
(4)	Without limiting subsections (1) to (3)—	21
(a)	for the purposes of the new Act, the forensic order (mental health) is taken to have been made when the forensic order (Minister) was made under the repealed Act; and	22 23 24 25
(b)	the new Act applies in relation to the forensic order (mental health) as if it were made under the new Act.	26 27
(5)	In this section—	28
	<i>relevant start day</i> , for a forensic order (Minister) mentioned in subsection (1)(b), means the day the order is made.	29 30

[s 842]

842	Forensic disability client temporarily detained in authorised mental health service	1 2
(1)	This section applies if, immediately before the commencement, a forensic disability client was detained in an authorised mental health service under the repealed Act, section 309B.	3 4 5 6
(2)	The repealed Act, section 309B continues to apply for the detention of the client in the authorised mental health service.	7 8
Part 9	Provisions about information orders under chapter 7A of repealed Act	9 10 11
843	Forensic information orders	12
(1)	This section applies if, immediately before the commencement, a person was entitled to receive information for a patient under a forensic information order under the repealed Act.	13 14 15 16
(2)	The person is taken to be entitled to receive the information mentioned in the new Act, schedule 1 under an information notice under the new Act.	17 18 19
844	Classified patient information orders	20
(1)	This section applies if, immediately before the commencement, a person was entitled to receive information for a patient under a classified patient information order under the repealed Act.	21 22 23 24
(2)	The information may continue to be disclosed to the person for the purposes of the new Act, chapter 17.	25 26

Part 10	Provisions about security of authorised mental health services under chapter 10 of repealed Act	1 2 3 4
845	Exclusion of visitors	5
	(1) This section applies if, immediately before the commencement, the administrator of an authorised mental health service had given a notice, under the repealed Act, section 374, to a person refusing to allow the person to visit a patient in the health service.	6 7 8 9 10
	(2) The notice is taken to have been given under the new Act, section 406.	11 12
Part 11	Provisions about Mental Health Court under chapter 11 of repealed Act	13 14 15
846	Mental Health Court registry	16
	(1) The Mental Health Court Registry established under the repealed Act continues in existence under the new Act.	17 18
	(2) Without limiting subsection (1), the employment of the registrar and other staff under the repealed Act immediately before the commencement is not affected by the commencement of the new Act.	19 20 21 22
847	Court examination order	23
	(1) This section applies if—	24

[s 848]

- (a) a court examination order was made under the repealed Act, section 422 before the commencement; and
 - (b) immediately before the commencement, the person was detained under the repealed Act, section 424(5).
 - (2) The court examination order continues in effect under the repealed Act as if the new Act had not commenced.
 - (3) The repealed Act, sections 422 to 425 continue to apply for the purposes of the person's examination and detention under the order.
- 848 Inquiry into detention of patient in authorised mental health service**
- An inquiry started by the Mental Health Court under the repealed Act, chapter 11, part 9 but not completed before the commencement may be completed under the repealed Act as if the new Act had not commenced.

Part 12 Miscellaneous

- 849 Mental Health Court, tribunal or another court may make orders about transition from repealed Act to new Act**
- (1) If this chapter makes no or insufficient provision for the transition to the new Act of a matter before a court, the court may make the order it considers appropriate.
 - (2) The order may be made—
 - (a) on application of the chief psychiatrist or a party to a proceeding before the court; or
 - (b) on the initiative of the court.
 - (3) In this section—

court means the Mental Health Court, the tribunal or another court. 1
2

850 Notices generally 3

- (1) Subsection (2) applies if, immediately before the commencement, a person was required under a provision of the repealed Act to give written or other notice about a particular matter under the repealed Act and had not given the notice. 4
5
6
7
8
- (2) The person must give the notice under the provision of the new Act that deals with similar matters to the matters for which notice was required to be given under the repealed Act. 9
10
11
- (3) Subsection (4) applies if— 12
- (a) a person has given a written or other notice about a particular matter under the repealed Act; and 13
14
- (b) on the commencement, a person who would have been required or authorised to do something under the repealed Act on receiving the notice has not yet done the thing; and 15
16
17
18
- (c) a provision of the new Act deals with similar matters to the matters for which the notice was required to be given under the repealed Act and requires or authorises a person to do something on receiving notice of the matters. 19
20
21
22
23
- (4) The requirement or authorisation under the new Act applies in relation to the person required or authorised to do the thing. 24
25

851 Records made under repealed Act 26

- (1) A record about a person that the administrator of an authorised mental health service was required to keep under the repealed Act immediately before the commencement must be kept with the patient's health records mentioned in the new Act, section 334. 27
28
29
30
31

[s 852]

(2)	Subsection (1) applies subject to a direction made by the chief psychiatrist.	1 2
852	Material submitted by victim or concerned person	3
(1)	Material submitted to the Mental Health Court under the repealed Act, section 284 is taken to be a victim impact statement given to the court for the purposes of the new Act.	4 5 6
(2)	Material submitted to the tribunal under the repealed Act, section 464 is taken to be a victim impact statement given to the tribunal for the purposes of the new Act.	7 8 9
853	Subpoenas	10
	A subpoena issued under the repealed Act before the commencement is taken to have been issued under the new Act.	11 12 13
854	Authorised mental health services and high security units	14 15
(1)	An authorised mental health service under the repealed Act is an authorised mental health service under the new Act.	16 17
(2)	A high security unit under the repealed Act is a high security unit under the new Act.	18 19
855	Office holders	20
(1)	This section applies to a person holding office under the repealed Act, by appointment or otherwise, immediately before the commencement if the person's office is provided for under the new Act.	21 22 23 24
(2)	The person continues to hold the office under the new Act.	25
	<i>Example of persons who continue to hold office under the new Act—</i>	26
	<ul style="list-style-type: none">the administrator of an authorised mental health service or high security unit	27 28

• an authorised doctor or authorised mental health practitioner	1
• the president and other members of the Mental Health Court	2
• the registrar of the Mental Health Court	3
• the president and other members, and executive officer, of the tribunal	4 5
(3) If the name of the office has changed under the new Act, the person holds office under the changed name.	6 7
(4) Without limiting subsection (3)—	8
(a) the director under the repealed Act is the chief psychiatrist on the commencement; and	9 10
(b) an assisting psychiatrist is an assisting clinician on the commencement.	11 12
(5) The person holds office—	13
(a) for the remainder of the term, if any, provided for under the repealed Act; and	14 15
(b) on the conditions provided for under the new Act.	16
856 Suspended proceedings	17
(1) This section applies to a proceeding for an offence if, immediately before the commencement, the proceeding was suspended under the repealed Act.	18 19 20
(2) The suspension ends in accordance with the new Act.	21
857 Reviews relating to serious risks	22
(1) This section applies to a review under the repealed Act, section 493AC if the review was started but not completed before the commencement.	23 24 25
(2) The review may be continued under the new Act, chapter 10, part 5 by the chief psychiatrist as if the chief psychiatrist were directed to undertake the review under that part.	26 27 28

[s 858]

858	Appeals	1
(1)	An appeal against a decision mentioned in the repealed Act, section 319 made before the commencement may be started or continued under the repealed Act, chapter 8, part 1.	2 3 4
(2)	The Mental Health Court may hear, or continue to hear, and decide the appeal under the repealed Act as if the new Act has not commenced.	5 6 7
(3)	An appeal against a decision of the Mental Health Court on a reference made before the commencement may be started or continued under the repealed Act, chapter 8, part 2.	8 9 10
(4)	The Court of Appeal may hear, or continue to hear, and decide the appeal under the repealed Act as if the new Act had not commenced.	11 12 13
(5)	For giving effect to a decision under subsection (2) or (4), the court may make the orders it considers necessary having regard to the new Act.	14 15 16
859	Annual reports	17
(1)	This section applies if a person was required to give a report under the repealed Act, section 435, 487 or 494 (each a <i>previous section</i>) and the report has not been given before the commencement.	18 19 20 21
(2)	The person is not required to give the report.	22
(3)	If, under subsection (2), the person does not give the report, the first report given under a provision of the new Act that corresponds to the previous section must include the matters that would have been required to be included in the report under the previous section.	23 24 25 26 27
860	References to orders and authorities under repealed Act	28
	A reference in a document to an order or authority under the repealed Act may, if the context permits, be taken to include a	29 30

reference to a corresponding order or authority provided for under the new Act.	1 2
861 Application of new Act, s 418	3
The new Act, section 418 does not apply to a review under the new Act, section 411(1)(c) until 1 year after the commencement of section 411.	4 5 6
862 Transitional regulation-making power	7
(1) A regulation (a <i>transitional regulation</i>) may make provision about a matter for which—	8 9
(a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the repealed Act to the operation of the new Act; and	10 11 12 13
(b) the new Act does not make provision or sufficient provision.	14 15
(2) A transitional regulation may have retrospective operation to a day not earlier than the day of commencement.	16 17
(3) A transitional regulation must declare it is a transitional regulation.	18 19
(4) This section and any transitional regulation expire 1 year after the day of the commencement.	20 21

[s 863]

Chapter 21	Amendment of Acts	1
Part 1	Amendment of this Act	2
863	Act amended	3
	This part amends this Act.	4
864	Amendment of long title	5
	Long title, from ‘, to repeal’—	6
	<i>omit.</i>	7
Part 2	Amendment of Criminal Code	8
865	Code amended	9
	This part amends the Criminal Code.	10
866	Amendment of ss 145A(a), 227C(3), definition <i>lawful custody</i>, 266 and 358	11
	Sections 145A(a), 227C(3), definition <i>lawful custody</i> , 266 and 358,	12
	‘ <i>Mental Health Act 2000</i> ’—	13
	<i>omit, insert—</i>	14
	<i>Mental Health Act 2015</i>	15
		16
867	Amendment of s 613 (Want of understanding of accused person)	17
	Section 613(3), from ‘kept in custody’—	18
	<i>omit, insert—</i>	19
		20

	admitted to an authorised mental health service to be dealt with under the <i>Mental Health Act 2015</i> .	1 2
868	Amendment of s 645 (Accused person insane during trial)	3
	Section 645(1), from ‘kept in strict custody’—	4
	<i>omit, insert—</i>	5
	admitted to an authorised mental health service to be dealt with under the <i>Mental Health Act 2015</i> .	6 7
869	Amendment of s 647 (Acquittal on ground of insanity)	8
	Section 647(1), from ‘kept in strict custody’—	9
	<i>omit, insert—</i>	10
	admitted to an authorised mental health service to be dealt with under the <i>Mental Health Act 2015</i> .	11 12
870	Amendment of s 668F (Powers of Court in special cases)	13
	Section 668F(4), ‘kept in strict custody’—	14
	<i>omit, insert—</i>	15
	admitted to an authorised mental health service to be dealt with under the <i>Mental Health Act 2015</i>	16 17
871	Amendment of s 678 (Definitions)	18
	Section 678(1), definition <i>acquittal</i> , paragraph (b)(ii), ‘ <i>Mental Health Act 2000</i> , section 281’—	19 20
	<i>omit, insert—</i>	21
	<i>Mental Health Act 2015</i> , section 119	22

[s 872]

Part 3	Amendment of Forensic Disability Act 2011	1 2
872	Act amended	3
	This part amends the <i>Forensic Disability Act 2011</i> .	4
873	Amendment of s 4 (How purpose is to be achieved)	5
	Section 4(d)(iii), ‘limited’—	6
	<i>omit.</i>	7
874	Amendment of s 6 (Application of Act)	8
	Section 6, ‘forensic order (Mental Health Court—Disability)’—	9
	<i>omit, insert—</i>	10
	forensic order (disability)	11
875	Amendment of s 7 (General principles)	12
	Section 7(e), second dot point, example—	13
	<i>omit.</i>	14
876	Amendment of s 10 (Who is a <i>forensic disability client</i>)	15
	(1) Section 10(1) to (4)—	16
	<i>omit, insert—</i>	17
	(1) A <i>forensic disability client</i> is an adult who has an intellectual or cognitive disability for whom a forensic order (disability) is in force if, under the Mental Health Act, the forensic disability service is responsible for the adult.	18 19 20 21 22
	<i>Note—</i>	23

	See the Mental Health Act, section 147 in relation to who is responsible for an adult for whom a forensic order (disability) is in force.	1 2 3
(2)	Section 10(5), ‘limited’— <i>omit.</i>	4 5
(3)	Section 10(5)— <i>renumber</i> as section 10(2).	6 7
877	Amendment of s 14 (Preparing plan for client) Section 14(6), definition <i>relevant plans</i> , paragraph (c), ‘treatment plan under the Mental Health Act applying to the client’— <i>omit, insert</i> — planned treatment and care recorded in the client’s health records under the Mental Health Act	8 9 10 11 12 13
878	Amendment of s 15 (Content of plan) Section 15(3), note, ‘limited’— <i>omit.</i>	14 15 16
879	Replacement of ch 2, pt 2, hdg (Limited community treatment) Chapter 2, part 2, heading— <i>omit, insert</i> —	17 18 19 20
	Part 2 Community treatment	21
880	Amendment of s 20 (Authorising limited community treatment) (1) Section 20, ‘limited’— <i>omit.</i> (2) Section 20(2), from ‘only if’—	22 23 24 25 26

[s 880]

<i>omit, insert—</i>	1
only if—	2
(a) the tribunal or Mental Health Court has ordered or approved the community treatment; and	3 4 5
(b) the senior practitioner is satisfied, having regard to the matters stated in subsection (3), there is not an unacceptable risk to the safety of the community, because of the client’s intellectual or cognitive disability, including the risk of serious harm to other persons or property.	6 7 8 9 10 11 12
(3) Section 20—	13
<i>insert—</i>	14
(3) For subsection (2), the senior practitioner must have regard to the following matters—	15 16
(a) for limited community treatment—the fact that the purpose of limited community treatment is to support the client’s rehabilitation by transitioning the client to living in the community with appropriate care and support;	17 18 19 20 21 22
(b) the client’s current mental state and intellectual disability;	23 24
(c) the client’s social circumstances, including, for example, family and social support;	25 26
(d) the client’s response to care and support including, if relevant, the client’s response to care and support in the community;	27 28 29
(e) the client’s willingness to continue to receive appropriate care and support;	30 31
(f) the nature of the unlawful act that led to the making of the applicable forensic order and	32 33

	the amount of time that has passed since the act occurred.	1 2
	(4) Also, if the senior practitioner authorises the community treatment, the senior practitioner must have regard to the matters mentioned in subsection (3) in deciding the nature and conditions of the community treatment.	3 4 5 6 7
881	Amendment of s 21 (Limited community treatment on order of tribunal or Mental Health Court)	8 9
	(1) Section 21, heading, ‘Limited community’— <i>omit, insert—</i>	10 11
	Community	12
	(2) Section 21, ‘limited’— <i>omit.</i>	13 14
882	Amendment of s 22 (What individual development plan must state about limited community treatment)	15 16
	Section 22, ‘limited’— <i>omit.</i>	17 18
883	Amendment of s 26 (Who is allied person if client does not have capacity to choose)	19 20
	Section 26(2), ‘or the Mental Health Act’— <i>omit.</i>	21 22
884	Insertion of new ch 4, pts 3 and 4	23
	Chapter 4— <i>insert—</i>	24 25

Part 3	Temporary absence	1
32A	Absence of client with director's approval	2
(1)	The director may, by written notice, approve the absence of a forensic disability client from the forensic disability service—	3 4 5
(a)	to receive medical, dental or optical treatment; or	6 7
(b)	to appear before a court, tribunal or other body; or	8 9
(c)	for another purpose the director considers to be appropriate on compassionate grounds.	10 11
(2)	The notice must state the approved period of absence.	12 13
(3)	The approval may be given on the conditions the director considers appropriate, including, for example, a condition that the client is to be in the care of a stated person for the period of absence.	14 15 16 17
Part 4	Rights of allied person	18
32B	Allied person to be notified of transfer of responsibility for forensic disability client	19 20
(1)	This section applies if the responsibility for a forensic disability client is transferred, under section 113A or the Mental Health Act, chapter 11, part 5—	21 22 23 24
(a)	from the forensic disability service to an authorised mental health service; or	25 26
(b)	from an authorised mental health service to the forensic disability service.	27 28

	(2) The administrator must give the client's allied person notice of the transfer of responsibility for the client.	1 2 3
	(3) Subsection (2) does not apply if the allied person is the client's nominated support person under the Mental Health Act.	4 5 6
885	Omission of ch 5 (Transfer and temporary absence of forensic disability clients)	7 8
	Chapter 5—	9
	<i>omit.</i>	10
886	Amendment of s 47 (Relationship with Disability Services Act)	11 12
	Section 47(a), 'limited'—	13
	<i>omit.</i>	14
887	Amendment of s 84 (Procedure for appeal)	15
	(1) Section 84(1), '376 to 380'—	16
	<i>omit, insert—</i>	17
	532 to 535	18
	(2) Section 84(2)—	19
	<i>omit, insert—</i>	20
	(2) For subsection (1), the Mental Health Act, section 532(2) applies as if a reference to a decision notice were a reference to the notice of the decision required to be given under section 82(2).	21 22 23 24 25

[s 888]

888	Amendment of s 91 (Policies and procedures about detention, care and support of clients)	1 2
	Section 91(2)(c), ‘special notification clients’—	3
	<i>omit, insert</i> —	4
	forensic disability clients for whom the offence leading to the making of the applicable forensic order is a prescribed offence within the meaning of the Mental Health Act	5 6 7 8
889	Omission of s 92 (Giving information about client to director (mental health) or nominee)	9 10
	Section 92—	11
	<i>omit.</i>	12
890	Omission of s 98 (Administrator’s obligation to ensure forensic order is given effect)	13 14
	Section 98—	15
	<i>omit.</i>	16
891	Amendment of s 113 (Taking client to forensic disability service or authorised mental health service)	17 18
(1)	Section 113(1)(f), ‘the Mental Health Act, section 309B has ended.’ and note—	19 20
	<i>omit, insert</i> —	21
	section 113A has ended.	22
(2)	Section 113(2)(b)(ii)—	23
	<i>omit, insert</i> —	24
	(ii) the director and the chief psychiatrist agree that the client be taken to the authorised mental health service for temporary detention under section	25 26 27 1

113A.	2
(3) Section 113(2)(b), note—	3
<i>omit.</i>	4
(4) Section 113(3)(a) and (b)—	5
<i>omit, insert—</i>	6
(a) if the client is to be detained in the forensic disability service—the forensic disability service; or	7 8 9
(b) if the client is to undertake community treatment—the place where the client is to undertake the community treatment.	10 11 12
(5) Section 113(4), ‘limited’—	13
<i>omit.</i>	14
(6) Section 113(4) to (6), ‘a health practitioner’—	15
<i>omit, insert—</i>	16
an authorised person under the Mental Health Act	17
(7) Section 113(4), ‘director (mental health)’—	18
<i>omit, insert—</i>	19
chief psychiatrist	20
(8) Section 113(9)—	21
<i>omit.</i>	22
892 Insertion of new s 113A	23
Chapter 9, part 1—	24
<i>insert—</i>	25

[s 893]

113A Temporary admission of client to authorised mental health service	1 2
(1) This section applies if a client is taken to an authorised mental health service under section 113.	3 4 5
(2) The director and the chief psychiatrist may agree to transfer responsibility for the client from the forensic disability service to the authorised mental health service for an agreed period.	6 7 8 9
<i>Note—</i>	10
See the Mental Health Act, section 147 in relation to who is responsible for an adult subject to a forensic order (disability).	11 12 13
(3) Subject to subsection (4), the agreed period must not be more than 3 days.	14 15
(4) The director and the chief psychiatrist may agree that the client be detained in the authorised mental health service for more than 3 days if—	16 17 18
(a) both the director and the chief psychiatrist are satisfied it is in the client’s best interests to do so having regard to the client’s health and safety; and	19 20 21 22
(b) the director has given the chief psychiatrist written notice detailing the arrangements for returning the responsibility for the client to the forensic disability service, by the end of the longer period.	23 24 25 26 27
(5) The chief psychiatrist must give written notice of an agreement mentioned in subsection (2) or (4) to the administrator of the authorised mental health service.	28 29 30 31

893 Amendment of s 114 (Application of pt 2)	32
Section 114, ‘limited’—	33

<i>omit.</i>	1
894 Amendment of s 115 (Entry of places)	2
Section 115, ‘limited’—	3
<i>omit.</i>	4
895 Amendment of s 116 (Offences relating to ill-treatment)	5
Section 116(1)(c), ‘limited’—	6
<i>omit.</i>	7
896 Amendment of s 117 (Offences relating to forensic disability clients absconding)	8
Section 117(1)(d)—	9
<i>omit.</i>	10
897 Amendment of s 122 (Confidentiality of information—other persons)	11
(1) Section 122(2), ‘or section 123’—	12
<i>omit.</i>	13
(2) Section 122(3)(d), ‘director (mental health)’—	14
<i>omit, insert—</i>	15
chief psychiatrist	16
898 Omission of s 123 (Disclosure of confidential information)	17
Section 123—	18
<i>omit.</i>	19
	20
	21
	22

[s 899]

899	Amendment of s 126 (Evidentiary provisions)	1
	Section 126(2)(a)(ii), ‘director (mental health)’—	2
	<i>omit, insert</i> —	3
	chief psychiatrist	4
900	Amendment of s 128 (Protection of officials from liability)	5
	Section 128(3), definition <i>official</i> , paragraph (b), ‘director (mental health)’—	6
	<i>omit, insert</i> —	7
	chief psychiatrist	8
901	Omission of ch 10 (Application of Mental Health Act)	10
	Chapter 10—	11
	<i>omit.</i>	12
902	Amendment of s 141 (Review by director)	13
(1)	Section 141(4), ‘202 for the hearing of a review of the client’s mental condition’—	14
	<i>omit, insert</i> —	15
	437 for the hearing of a review of the forensic order (disability) to which the client is subject	16
(2)	Section 141(5)(c)—	17
	<i>omit, insert</i> —	18
	(c) any period for which the administrator of an authorised mental health service was responsible for the client under section 147 of the Mental Health Act.	19
(3)	Section 141(5), example, ‘limited’—	20
	<i>omit.</i>	21
		22
		23
		24
		25
		26

903	Omission of s 142 (Transfer from forensic disability service to authorised mental health service)	1 2
	Section 142—	3
	<i>omit.</i>	4
904	Amendment of s 144 (Administration of medication for particular purposes)	5 6
	(1) Section 144(1)—	7
	<i>omit.</i>	8
	(2) Section 144(2), ‘also’—	9
	<i>omit.</i>	10
	(3) Section 144(2), ‘a client to’—	11
	<i>omit, insert—</i>	12
	a forensic disability client to or from	13
905	Omission of s 149 (Director taken to have complied with particular requirements)	14 15
	Section 149—	16
	<i>omit.</i>	17
906	Omission of s 152 (Care of client detained temporarily in authorised mental health service)	18 19
	Section 152—	20
	<i>omit.</i>	21
907	Amendment of s 155 (Use of reasonable force)	22
	Section 155(1)(a), ‘37, 113(2) or (3)’—	23
	<i>omit, insert—</i>	24
	113(2) or (3)	25

[s 908]

908	Amendment of ch 13, hdg (Transitional provision)	1	
	Chapter 13, heading, ‘provision’—	2	
	<i>omit, insert</i> —	3	
	provisions	4	
909	Insertion of new ch 13, pt 1, hdg	5	
	Chapter 13, before section 160—	6	
	<i>insert</i> —	7	
	Part 1	Transitional provision	8
		for Forensic Disability	9
		Act 2011	10
910	Insertion of new ch 13, pt 2	11	
	Chapter 13—	12	
	<i>insert</i> —	13	
	Part 2	Transitional provisions	14
		for Mental Health Act	15
		2015	16
	161 Definitions for pt 2	17	
	In this part—	18	
	<i>amended Act</i> means this Act as in force on the	19	
	commencement.	20	
	<i>previous Act</i> means this Act as in force	21	
	immediately before the commencement.	22	

162 Temporary absence approval	1
A temporary absence approval given under the previous Act, section 41 and in force immediately before the commencement is taken to be an approval given under the amended Act, section 32A.	2 3 4 5
163 Transfer order	6
A transfer order made under the previous Act, section 142 for the transfer of a forensic disability client to an authorised mental health service is taken to be an agreement under the <i>Mental Health Act 2015</i> , section 351 to transfer responsibility for the client from the forensic disability service to the authorised mental health service.	7 8 9 10 11 12 13
164 Application of s 141	14
The period mentioned in section 141(5)(c) is taken to include a period for which the forensic disability client was—	15 16 17
(a) detained temporarily in an authorised mental health service under the repealed <i>Mental Health Act 2000</i> , section 309B; or	18 19 20
(b) absent from the health service while undertaking limited community treatment within the meaning of the repealed <i>Mental Health Act 2000</i> , or under an approval given section 186 of that Act.	21 22 23 24
165 Application of transitional provisions to forensic disability clients	25 26
(1) A provision of the <i>Mental Health Act 2015</i> , chapter 20 applies for a forensic disability client to the extent—	27 28 29
(a) the provision operates in relation to a previously applied provision; and	30 31

[s 911]

(b) the context permits.	1
(2) This section does not limit the operation of the <i>Mental Health Act 2015</i> , chapter 20.	2 3
(3) In this section—	4
<i>previously applied provision</i> means a provision of the repealed <i>Mental Health Act 2000</i> that was, immediately before the commencement, an applied provision under this Act.	5 6 7 8
166 Transitional regulation-making power	9
(1) A regulation (a <i>transitional regulation</i>) may make provision about a matter for which—	10 11
(a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the previous Act to the operation of the amended Act; and	12 13 14 15 16
(b) the amended Act or the <i>Mental Health Act 2015</i> does not make provision or sufficient provision.	17 18 19
(2) A transitional regulation may have retrospective operation to a day not earlier than the day of commencement.	20 21 22
(3) A transitional regulation must declare it is a transitional regulation.	23 24
(4) This section and any transitional regulation expire 1 year after the day of the commencement.	25 26
911 Amendment of sch 2 (Dictionary)	27
(1) Schedule 2, definitions <i>applicable forensic order</i> ; <i>applied provisions</i> ; <i>director (mental health)</i> ; <i>forensic information order</i> ; <i>forensic order (Mental Health Court—Disability)</i> ; <i>patient</i> ; <i>special notification client</i> and <i>transfer order</i> —	28 29 30 31

<i>omit.</i>	1
(2) Schedule 2—	2
<i>insert</i> —	3
<i>applicable forensic order</i> , in relation to a forensic disability client, means the forensic order (disability) that is in force for the client.	4 5 6
<i>chief psychiatrist</i> see the Mental Health Act, schedule 3.	7 8
<i>community treatment</i> , for a forensic disability client, means—	9 10
(a) if the category of the applicable forensic order is community under the Mental Health Act—the provision of care and support for the client in the community under the order;	11 12 13 14
or	15
(b) if the category of the applicable forensic order is inpatient under the Mental Health Act—limited community treatment for the client.	16 17 18 19
<i>forensic order (disability)</i> see the Mental Health Act, schedule 3.	20 21
(3) Schedule 2, definition <i>limited community treatment</i> , after ‘in the community’—	22 23
<i>insert</i> —	24
for up to 7 days	25
(4) Schedule 2, definition <i>Mental Health Act, ‘2000’</i> —	26
<i>omit, insert</i> —	27
2015	28
(5) Schedule 2, definition <i>temporary absence approval</i> , ‘section 41’—	29 30
<i>omit, insert</i> —	31

[s 912]

section 32A	1
Part 4	2
Amendment of Powers of Attorney Act 1998	3
912 Act amended	4
This part amends the <i>Powers of Attorney Act 1998</i> .	5
913 Amendment of s 6A (Relationship with Guardianship and Administration Act 2000)	6
Section 6A(1)(c), note, ‘psychosurgery’—	7
<i>omit, insert—</i>	8
a non-ablative neurosurgical procedure	9
914 Amendment of s 38 (Act’s relationship with Mental Health Act)	10
Section 38, ‘ <i>Mental Health Act 2000</i> ’—	11
<i>omit, insert—</i>	12
<i>Mental Health Act 2015</i>	13
915 Amendment of sch 2 (Types of matters)	14
(1) Schedule 2, section 5(3)—	15
<i>insert—</i>	16
(d) psychosurgery for the principal.	17
(2) Schedule 2, section 7(e), ‘psychosurgery’—	18
<i>omit, insert—</i>	19
a non-ablative neurosurgical procedure	20
	21
	22

(3)	Schedule 2, section 15—	1
	<i>omit, insert—</i>	2
	15 Psychosurgery	3
	<i>Psychosurgery</i> is a procedure on the brain, that involves deliberate damage to or removal of brain tissue, for the treatment of a mental illness.	4 5 6
(4)	Schedule 2—	7
	<i>insert—</i>	8
	15A Non-ablative neurosurgical procedure	9
	A <i>non-ablative neurosurgical procedure</i> is a procedure on the brain, that does not involve deliberate damage to or removal of brain tissue, for the treatment of a mental illness.	10 11 12 13
916	Amendment of sch 3 (Dictionary)	14
	Schedule 3—	15
	<i>insert—</i>	16
	<i>non-ablative neurosurgical procedure</i> see schedule 2, section 15A.	17 18
Part 5	Amendment of Public Health Act 2005	19 20
917	Act amended	21
	This part amends the <i>Public Health Act 2005</i> .	22
918	Amendment of s 7 (How object is mainly achieved)	23
(1)	Section 7(d) to (i)—	24

[s 919]

<i>renumber</i> as section 7(e) to (j).	1
(2) Section 7—	2
<i>insert</i> —	3
(d) providing for persons who have a major disturbance in mental capacity to be transported to a treatment or care place; and	4 5 6
919 Insertion of new ch 4A	7
After chapter 4—	8
<i>insert</i> —	9
Chapter 4A Health of persons with major disturbance in mental capacity	10 11 12 13
Part 1 Preliminary	14
157A Definitions for ch 4A	15
In this chapter—	16
<i>administrator</i> , of an authorised mental health service, see the <i>Mental Health Act 2015</i> , schedule 3.	17 18 19
<i>ambulance officer</i> see the <i>Ambulance Service Act 1991</i> , schedule.	20 21
<i>authorised mental health practitioner</i> see the <i>Mental Health Act 2015</i> , schedule 3.	22 23
<i>authorised mental health service</i> see the <i>Mental Health Act 2015</i> , schedule 3.	24 25
<i>authorised person</i> means—	26

(a) a police officer; or	1
(b) an appropriately qualified health service employee appointed as an authorised person by the person in charge of a public sector health service facility or the administrator of an authorised mental health service; or	2 3 4 5 6
(c) a security officer.	7
<i>emergency examination authority</i> see section 157D(1).	8 9
<i>examination period</i> see section 157E(1).	10
<i>health practitioner</i> means a person registered under the Health Practitioner Regulation National Law, or another person who provides health services, including, for example, a social worker.	11 12 13 14 15
<i>public sector health service facility</i> see the <i>Hospital and Health Boards Act 2011</i> , schedule 2.	16 17 18
<i>security officer</i> means a person employed or engaged by a public sector health service facility or an authorised mental health service to provide security services, regardless of how the person's employment or engagement is described.	19 20 21 22 23
<i>treatment or care place</i> means a public sector health service facility, authorised mental health service or another place, other than a watch house, where a person may receive treatment and care appropriate to the person's needs.	24 25 26 27 28
<i>Example of another place where a person may receive treatment and care appropriate to the person's needs—</i>	29 30
the person's home	31

[s 919]

Part 2	Taking persons to treatment or care place	1 2
157B Ambulance officer or police officer may detain and transport person		3 4
(1)	This section applies if an ambulance officer or police officer believes—	5 6
(a)	a person’s behaviour, including, for example, the way in which the person is communicating, indicates the person is at immediate risk of serious harm; and	7 8 9 10
	<i>Example—</i>	11
	a person is threatening to commit suicide	12
(b)	the risk appears to be the result of a major disturbance in the person’s mental capacity, whether caused by illness, disability, injury, intoxication or another reason; and	13 14 15 16
(c)	the person appears to require urgent examination, or treatment and care, for the disturbance.	17 18 19
(2)	For the <i>Police Powers and Responsibilities Act 2000</i> , section 609(1)(a)(i), the police officer may consider advice received from a health practitioner about the person in forming a view as to whether there is an imminent risk of injury to a person.	20 21 22 23 24 25
(3)	The ambulance officer or police officer may detain the person and transport the person to a treatment or care place.	26 27 28
(4)	If the treatment or care place is a public sector health service facility that is not an inpatient hospital, the person may only be transported to the facility with the approval of the person in charge of the facility.	29 30 31 32 33

-
- (5) If the person is detained and transported to a treatment or care place, other than a public sector health service facility or authorised mental health service, the person can not be detained at the place unless an Act otherwise requires.

Note—

See section 157E for detention in a treatment or care place that is a public sector health service facility or authorised mental health service.

- (6) In this section—
- inpatient hospital* means a hospital where a person may be discharged on a day other than the day on which the person was admitted to the hospital.

157C What ambulance officer or police officer must tell person

- (1) The ambulance officer or police officer must—
- (a) tell the person that the officer is detaining the person and transporting the person to a treatment or care place; and
- (b) explain to the person how taking action under paragraph (a) may affect the person.
- (2) The ambulance officer or police officer must take reasonable steps to ensure the person understands the information given under subsection (1), including by telling the person or explaining the thing to the person—
- (a) in an appropriate way having regard to the person's age, culture, mental impairment or illness, communication ability and any disability; and

[s 919]

- (b) in a way, including, for example, in a language, the person is most likely to understand.

157D Giving emergency examination authority

- (1) If the ambulance officer or police officer takes the person to a treatment or care place that is a public sector health service facility or an authorised mental health service, the officer must immediately make an authority (an *emergency examination authority*) for the person.
- (2) The authority must—
- (a) be in the approved form; and
- (b) state the time when it is given.
- (3) The person may be detained in the treatment or care place while the authority is being made.
- (4) Immediately after making the authority, the ambulance officer or police officer must give the authority to a health service employee at the treatment or care place.

157E Detention in treatment or care place

- (1) A person subject to an emergency examination authority may be detained in a treatment or care place that is a public sector health service facility or an authorised mental health service for a period (the *examination period*) of not more than 6 hours starting when the authority is made.
- (2) A doctor or health practitioner must explain the effect of the authority to the person.
- (3) The doctor or health practitioner must take reasonable steps to ensure the person understands the information given under subsection (2),

-
- including by telling the person or explaining the information to the person—
- (a) in an appropriate way having regard to the person’s age, culture, mental impairment or illness, communication ability and any disability; and
 - (b) in a way, including, for example, in a language, the person is most likely to understand.
- (4) Also, a doctor or health practitioner may extend or further extend the examination period to not more than 12 hours after it starts if the doctor or health practitioner believes the extension is necessary to carry out or finish an examination of the person under section 157F.

157F Examination

- (1) A doctor or health practitioner may examine a person subject to an emergency examination authority to decide the person’s treatment and care needs.
- (2) Also, a doctor or authorised mental health practitioner may examine the person to decide whether to make a recommendation for assessment for the person under the *Mental Health Act 2015*.
- (3) An examination may be carried out using an audiovisual link if the doctor or health practitioner examining the person believes it is clinically appropriate.
- (4) In this section—
audiovisual link means facilities that enable reasonably contemporaneous and continuous

[s 919]

audio and visual communication between 1
persons at different places. 2

Part 3 Return of persons who abscond 3 4

157G Application of pt 3 5

This part applies if a person absconds from a 6
public sector health service facility or authorised 7
mental health service while being detained under 8
this chapter. 9

157H Administrator or person in charge may require return of absent person 10 11

- (1) A person in charge of a public sector health 12
service facility or the administrator of an 13
authorised mental health service may— 14
 - (a) authorise an authorised person, other than a 15
police officer, to transport the person to a 16
public sector health service facility or an 17
authorised mental health service; or 18
 - (b) ask a police officer to transport the person to 19
a public sector health service facility or an 20
authorised mental health service. 21
- (2) The authorisation or request must— 22
 - (a) be in the approved form; and 23
 - (b) state the name of the person to be 24
transported; and 25
 - (c) state the name of the public sector health 26
service facility or authorised mental health 27
service to which the person is to be 28
transported; and 29

-
- (d) identify the risk the person presents to himself or herself, the authorised person or police officer, and others; and
- (e) for a request to a police officer—state the reasons why the person in charge or administrator considers it necessary for a police officer to transport the person.
- (3) Before giving the authorisation or making the request, the person in charge or administrator must make reasonable efforts to contact the person and encourage the person to come or return to the public sector health service facility or authorised mental health service.
- (4) Subsection (3) does not apply if the person in charge or administrator considers there is a risk that the person may harm himself or herself or others if the person in charge or administrator complies with the subsection.
- Note—*
- See also part 5 for applying for a warrant for the apprehension of a person.

157I Duration of authorisation

An authorisation under section 157H to transport the person is in force for 3 days after the day the person absconds.

157J Authorised person may transport absent person

- (1) This section applies if an authorised person is authorised to transport a person under section 157H(1)(a).
- (2) The authorised person may transport the person named in the authorisation to the public sector

[s 919]

health service facility or authorised mental health 1
service stated in the authorisation. 2

- (3) If the authorised person intends to ask a police 3
officer, under the *Police Powers and* 4
Responsibilities Act 2000, section 16, to help the 5
authorised person transport the named person, 6
the authorised person must ask the police officer 7
in the approved form mentioned in section 8
157H(2). 9

Note— 10

Under the *Mental Health Act 2015*, section 357(4), an 11
authorised person, other than a police officer, is a public 12
official for the *Police Powers and Responsibilities Act* 13
2000. Under section 16 of that Act, a public official may 14
ask a police officer to help the public official perform 15
the public official's functions. 16

- (4) The approved form must state the reasons why 17
the authorised person considers it necessary to 18
ask the police officer to help transport the person. 19

- (5) Before transporting the person, the authorised 20
person must— 21

(a) tell the person the authorised person is 22
detaining the person and transporting the 23
person to the public sector health service 24
facility or authorised mental health service 25
stated in the authorisation; and 26

(b) explain to the person how taking action 27
under paragraph (a) may affect the person. 28

157K Effect on examination period 29

For a person transported under an authorisation 30
or request under section 157H— 31

- (a) despite section 157E(1), the examination 32
period for the person starts when the person 33
is admitted to the service or facility to which 34

the person is transported under section 1
157E; and 2

- (b) a health service employee must note on the 3
person's emergency examination authority 4
when the examination period starts under 5
paragraph (a). 6

Part 4 Powers 7

157L Use of force to detain and transport 8

An ambulance officer or police officer may 9
exercise the power to detain and transport a 10
person under this chapter with the help, and using 11
the force, that is necessary and reasonable in the 12
circumstances. 13

157M Transfer to another treatment or care place 14

- (1) This section applies if— 15
- (a) a person subject to an emergency 16
examination authority is transported to a 17
treatment or care place that is a public sector 18
health service facility or an authorised 19
mental health service; and 20
- (b) a doctor or authorised mental health 21
practitioner believes it is necessary for the 22
person to be transported to another 23
treatment or care place that is a public sector 24
health service facility or an authorised 25
mental health service. 26
- (2) An authorised person may transport the person 27
under the emergency examination authority to the 28
other treatment or care place. 29

[s 919]

Note—

A person subject to an emergency examination authority may only be detained in a treatment or care place for the examination period, or the examination period as extended under section 157E(4).

157N Use of reasonable force to detain person

- (1) This section applies if, under an emergency examination authority, a person may be detained in a public sector health service facility or an authorised mental health service.
- (2) The person in charge of the public sector health service facility or the administrator of the authorised mental health service, and anyone lawfully helping the person in charge or the administrator, may exercise the power to detain the person in the facility or service with the help, and using the force, that is necessary and reasonable in the circumstances.

157O Examination of person without consent and with use of reasonable force

- (1) An examination of a person subject to an emergency examination authority may be made under this chapter without the consent of the person or anyone else.
- (2) A person lawfully examining the person, or lawfully helping to examine the person, may use the force that is necessary and reasonable in the circumstances to examine, or help examine, the person.

157P Return after examination or treatment and care to person's requested place

- (1) This section applies if—

-
- (a) a person is transported from the community to a treatment or care place that is a public sector health service facility or an authorised mental health service; and
- (b) at the end of the examination period, or the examination period as extended under section 157E(4), for the person, a recommendation for assessment under the *Mental Health Act 2015* is not made for the person.
- (2) If the person is detained in a public sector health service facility, the person in charge of the facility must take reasonable steps to ensure the person is returned to a place reasonably requested by the person.
- (3) If the person is detained in an authorised mental health service, the administrator of the service must take reasonable steps to ensure the person is returned to a place reasonably requested by the person.

Part 5 **Warrant for apprehension of person to transport person**

157Q Application for warrant for apprehension of person

- (1) This section applies if an authorised person considers a warrant for apprehension of a person is necessary to enable an authorised person to transport the person under this chapter to a public sector health service facility or authorised mental health service for an examination.

[s 919]

- | | | |
|-----|--|-------------------------|
| (2) | The authorised person may apply to a magistrate for a warrant for apprehension of the person. | 1
2 |
| (3) | The authorised person must prepare a written application that states the grounds on which the warrant is sought. | 3
4
5 |
| (4) | The written application must be sworn. | 6 |
| (5) | The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires. | 7
8
9
10
11 |
| | <i>Example—</i> | 12 |
| | The magistrate may require additional information supporting the application to be given by statutory declaration. | 13
14
15 |

157R Issue of warrant 16

- | | | |
|-----|---|----------------------------------|
| (1) | A magistrate may issue the warrant for apprehension of the person if the magistrate is satisfied the warrant is necessary to enable an authorised person to transport the person to a public sector health service facility or authorised mental health service for an examination. | 17
18
19
20
21
22 |
| (2) | The warrant authorises an authorised person— | 23 |
| (a) | to enter any 1 or more places the authorised person reasonably believes the person is; and | 24
25
26 |
| (b) | to search the places to find the person; and | 27 |
| (c) | to remain in the places for as long as the authorised person considers it reasonably necessary to find the person; and | 28
29
30 |
| (d) | to transport the person to a stated public sector health service facility or stated authorised mental health service. | 31
32
33 |

<i>Note—</i>	1
For a police officer’s entry and search powers, see the <i>Police Powers and Responsibilities Act 2000</i> , section 21.	2 3
Also, for the use of force by a police officer, see the <i>Police Powers and Responsibilities Act 2000</i> , section 615.	4 5 6
(3) The warrant must state—	7
(a) the person to whom the warrant applies; and	8
(b) that an authorised person may, with necessary and reasonable help and force, exercise—	9 10 11
(i) the powers under the warrant mentioned in subsection (2); and	12 13
(ii) the powers mentioned in part 4; and	14
(c) the hours of the day or night when a place mentioned in subsection (2)(a) may be entered; and	15 16 17
(d) the magistrate’s name; and	18
(e) the day and time of the warrant’s issue; and	19
(f) the day, within 7 days after the warrant’s issue, the warrant ends.	20 21
(4) An authorised person may exercise powers under the warrant with the help, and using the force, that is reasonable in the circumstances.	22 23 24

157S Electronic application 25

(1) An application under section 157Q may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the authorised person reasonably considers it necessary because of—	26 27 28 29 30
(a) urgent circumstances; or	31

[s 919]

- (b) other special circumstances, including, for example, the authorised person's remote location. 1
2
3
- (2) The application— 4
 - (a) may not be made before the authorised person prepares the written application under section 157Q(3); but 5
6
7
 - (b) may be made before the written application is sworn. 8
9

- 157T Additional procedure if electronic application** 10
 - (1) For an application made under section 157S, the magistrate may issue the warrant for apprehension of the person (the *original warrant*) only if the magistrate is satisfied— 11
12
13
14
 - (a) it was necessary to make the application under section 157S; and 15
16
 - (b) the way the application was made under section 157S was appropriate. 17
18
 - (2) After the magistrate issues the original warrant— 19
 - (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised person, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the authorised person; or 20
21
22
23
24
25
 - (b) otherwise— 26
 - (i) the magistrate must tell the authorised person the information mentioned in section 157R(3); and 27
28
29
 - (ii) the authorised person must complete a form of warrant, including by writing on it the information mentioned in 30
31
32

-
- section 157R(3) told to the person by 1
the magistrate. 2
- (3) The copy of the warrant mentioned in subsection 3
(2)(a), or the form of warrant completed under 4
subsection (2)(b) (in either case the *duplicate* 5
warrant), is a duplicate of, and as effectual as, 6
the original warrant. 7
- (4) The authorised person must, at the first 8
reasonable opportunity, send to the magistrate— 9
- (a) the written application complying with 10
section 157Q(3) and (4); and 11
- (b) if the authorised person completed a form of 12
warrant under subsection (2)(b), the 13
completed form of warrant. 14
- (5) The magistrate must keep the original warrant 15
and, on receiving the documents under 16
subsection (4)— 17
- (a) attach the documents to the original warrant; 18
and 19
- (b) give the original warrant and documents to 20
the clerk of the court of the relevant 21
magistrates court. 22
- (6) Despite subsection (3), if— 23
- (a) an issue arises in a proceeding about 24
whether an exercise of a power was 25
authorised by a warrant issued under this 26
section; and 27
- (b) the original warrant is not produced in 28
evidence; 29
- the onus of proof is on the person relying on the 30
lawfulness of the exercise of the power to prove a 31
warrant authorised the exercise of the power. 32
- (7) In this section— 33
-

[s 919]

relevant magistrates court, in relation to a 1
magistrate, means the Magistrates Court that the 2
magistrate constitutes under the *Magistrates Act* 3
1991. 4

157U Defect in relation to a warrant 5

- (1) A warrant for apprehension of a person is not 6
invalidated by a defect in— 7
- (a) the warrant; or 8
- (b) compliance with this part; 9
- unless the defect affects the substance of the 10
warrant in a material particular. 11
- (2) In this section— 12
- warrant for apprehension* includes a duplicate 13
warrant under section 157T(3). 14

157V Warrants—entry procedure 15

- (1) This section applies if an authorised person is 16
intending to enter a place under a warrant for 17
apprehension of a person. 18
- (2) Before entering the place, the authorised person 19
must do or make a reasonable attempt to do the 20
following things— 21
- (a) identify himself or herself to a person 22
present at the place who is an occupier of 23
the place; 24
- Note—* 25
- See also the *Police Powers and Responsibilities* 26
Act 2000, section 637. 27
- (b) give the person a copy of the warrant or, if 28
the entry is authorised by a duplicate 29
warrant under section 157T(3), a copy of the 1

-
- duplicate warrant; 2
- (c) tell the person the authorised person is 3
permitted by the warrant to enter and search 4
the place to find the person named in the 5
warrant; 6
- (d) give the person an opportunity to allow the 7
authorised person immediate entry to the 8
place without using force. 9
- (3) However, the authorised person need not comply 10
with subsection (2) if the authorised person 11
reasonably believes immediate entry to the place 12
is required to ensure the effective execution of 13
the warrant is not frustrated. 14

Part 6 Searches of persons in 15 treatment or care place 16

157W Application of pt 6 17

This part applies to a person who is being 18
detained in a public sector health service facility 19
or authorised mental health service for an 20
examination under this chapter. 21

157X Definitions for pt 6 22

In this part— 23

general search, of a person, means a search— 24

(a) to reveal the contents of the person’s outer 25
garments, general clothes or hand luggage 26
without touching the person or the luggage; 27
or 28

(b) in which the person may be required to— 29

[s 919]

(i) open his or her hands or mouth for visual inspection; or	1 2
(ii) shake his or her hair vigorously.	3
<i>harmful thing</i> means anything—	4
(a) that may be used to—	5
(i) threaten the security or good order of a public sector health service facility or authorised mental health service; or	6 7 8
(ii) threaten a person’s health or safety; or	9
(b) that, if used by a patient in a public sector health service facility or authorised mental health service, is likely to adversely affect the patient’s treatment or care.	10 11 12 13
<i>Examples of harmful things—</i>	14
• a dangerous drug	15
• alcohol	16
• medication	17
• provocative or offensive documents	18
<i>personal search</i> , of a person, means a search in which light pressure is momentarily applied to the person over his or her general clothes without direct contact being made with—	19 20 21 22
(a) the person’s genital or anal areas; or	23
(b) for a female—the person’s breasts.	24
<i>scanning search</i> , of a person, means a search of the person by electronic or other means that does not require the person to remove his or her general clothes or to be touched by another person.	25 26 27 28 29
<i>Examples of a scanning search—</i>	30
• using a portable electronic apparatus or another portable apparatus that can be passed over the person	31 32

-
- using an electronic apparatus through which the person is required to pass

search requiring the removal of clothing, of a person, means a search in which the person removes all garments during the course of the search, but in which direct contact is not made with the person.

157Y Power to search on belief of possession of harmful thing

- (1) This section applies if a doctor or health practitioner believes the person may have possession of a harmful thing.
- (2) The doctor or health practitioner may—
 - (a) carry out a general search, scanning search or personal search of the person; and
 - (b) if the person in charge of the public sector health service facility, or the administrator of the authorised mental health service, gives approval for a search requiring the removal of clothing—carry out a search requiring the removal of clothing; and
 - (c) carry out a search of the person’s possessions.
- (3) The person in charge of the public sector health service facility, or the administrator of the authorised mental health service, may give approval under subsection (2)(b) if the person in charge or administrator believes that a search requiring the removal of clothing is necessary in the circumstances.
- (4) A search under this section may be carried out without the person’s consent.

[s 919]

- | | | |
|-----|--|------------------|
| (5) | However, before carrying out a search under this section, the doctor or health practitioner must tell the person the reasons for the search and how it is to be carried out. | 1
2
3
4 |
| (6) | A doctor or health practitioner may carry out a search under this section with the help, and using the force, that is necessary and reasonable in the circumstances. | 5
6
7
8 |

157Z Requirements for personal search 9

- | | | |
|-----|--|----------------------|
| (1) | A person authorised under section 157Y to carry out a personal search (the <i>searcher</i>) may do any 1 or more of the following in relation to the person being searched— | 10
11
12
13 |
| (a) | remove and inspect an outer garment or footwear of the person; | 14
15 |
| (b) | remove and inspect all things from the pockets of the person’s clothing; | 16
17 |
| (c) | touch the clothing worn by the person to the extent necessary to detect things in the person’s possession; | 18
19
20 |
| (d) | remove and inspect any detected thing. | 21 |
| (2) | The searcher may exercise a power under subsection (1)(c) only if— | 22
23 |
| (a) | the searcher is the same gender as the person; and | 24
25 |
| (b) | the search is carried out in a part of a building that ensures the person’s privacy. | 26
27 |
| (3) | The searcher must— | 28 |
| (a) | carry out the search in a way that respects the person’s dignity to the greatest possible extent; and | 29
30
31 |

-
- (b) cause as little inconvenience to the person as
is practicable in the circumstances. 1
2

**157ZA Requirements for search requiring the
removal of clothing** 3
4

- (1) A search under section 157Y requiring the
removal of clothing of a person must be carried
out by at least 2 persons authorised to carry out
the search, but by no more persons than are
reasonably necessary to carry out the search. 5
6
7
8
9
- (2) Each person carrying out the search (each a
searcher) must be of the same gender as the
person being searched. 10
11
12
- (3) Before carrying out the search, 1 of the searchers
must tell the person— 13
14
- (a) that the person will be required to remove
the person's clothing during the search; and 15
16
- (b) why it is necessary to remove the clothing. 17
- (4) The searcher must— 18
- (a) ensure the search is carried out in a part of a
building that ensures the person's privacy;
and 19
20
21
- (b) ensure, to the extent practicable, that the
way in which the person is searched causes
minimal embarrassment to the person; and 22
23
24
- (c) take reasonable care to protect the person's
dignity; and 25
26
- (d) carry out the search as quickly as reasonably
practicable; and 27
28
- (e) allow the person to dress as soon as the
search is finished. 29
30
- (5) The searcher must, if reasonably practicable, give
the person the opportunity to remain partly 31
32

[s 919]

clothed during the search, including, for example, 1
by allowing the person to dress his or her upper 2
body before being required to remove clothing 3
from the lower part of the body. 4

- (6) If the searcher seizes clothing because of the 5
search, the searcher must ensure the person is left 6
with, or given, reasonably appropriate clothing. 7

157ZB Requirements for search of possessions 8

- (1) A person authorised under section 157Y to carry 9
out a search of a person's possessions (the 10
searcher) may— 11
- (a) open or inspect a thing in the person's 12
possession; and 13
- (b) remove and inspect any detected thing. 14
- (2) However, the searcher may exercise a power to 15
inspect a thing under subsection (1) only if the 16
person is present or has been given the 17
opportunity to be present. 18
- (3) Subsection (2) does not apply if the person 19
obstructs the searcher in the exercise of the 20
searcher's powers. 21

157ZC Record of search must be made 22

- (1) This section applies if— 23
- (a) a search requiring the removal of clothing is 24
carried out under section 157Y; or 25
- (b) a person seizes anything found during a 26
search under section 157Y. 27
- (2) As soon as practicable after carrying out the 28
search, the person who carried out the search 29
must make a written record of the following 30
details of the search— 31

-
- (a) the reasons for the search; 1
 - (b) the names of the persons present during the search; 2
3
 - (c) how the search was carried out; 4
 - (d) details of anything seized, including the reasons for seizing. 5
6

157ZD Seizure of harmful thing 7

- (1) A person authorised under section 157Y to carry out a search (the *searcher*) may seize anything found during the search that the searcher reasonably suspects is— 8
9
10
11
 - (a) connected with, or is evidence of, the commission or intended commission of an offence against an Act; or 12
13
14
 - (b) a harmful thing. 15
- (2) If the searcher believes a seized thing is connected with, or is evidence of, the commission or intended commission of an offence against an Act, the searcher must give it to an authorised inspector for the Act. 16
17
18
19
20
- (3) The seizure provisions of the Act mentioned in subsection (2) apply to the thing as if the searcher had seized it under the provisions of the Act that relate to the offence. 21
22
23
24
- (4) If the authorised inspector is not reasonably satisfied the thing is evidence of the commission or intended commission of an offence against the Act, the authorised inspector must return it to the searcher who must deal with it under this section. 25
26
27
28
29
- (5) If the searcher believes a thing seized from a person, or a thing returned under subsection (4), is a harmful thing, the searcher must— 30
31
32

[s 919]

- (a) keep it for the person and give it to the person on the person's discharge from the public sector health service facility or authorised mental health service; or
 - (b) give it to someone else if the person is able to give, and has given, agreement to do so; or
 - (c) if the searcher is satisfied someone else is entitled to possession of the thing—give or send it to the person; or
 - (d) if the searcher is satisfied it is of negligible value—dispose of it in the way the person in charge of the public sector health service facility or the administrator of the authorised mental health service, believes appropriate.
- (6) Regard must be had to a thing's nature, condition and value in deciding—
- (a) whether it is reasonable to make inquiries or efforts; and
 - (b) if making inquiries or efforts—what inquiries or efforts, including the period over which they are made, are reasonable.
- (7) In this section—
- authorised inspector***, for an Act, means a person who is authorised under the Act to perform inspection and enforcement functions.
- seizure provisions***, of an Act, means the provisions of the Act relating to the access to, and retention, disposal and forfeiture of, a thing after its seizure under the Act.

157ZE Receipt for seized thing	1
(1) A person authorised under section 157Y to carry out a search must give a receipt for a thing seized to the person from whom it was seized.	2 3 4
(2) The receipt must describe generally the thing seized and its condition.	5 6
157ZF Access to seized thing	7
(1) This section applies to a thing seized on a search under section 157Y.	8 9
(2) Until the thing is forfeited or returned under this part, the searcher must allow its owner to inspect it and, if it is a document, to copy it.	10 11 12
(3) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.	13 14 15
Part 7 Miscellaneous	16
157ZG Relationship with Guardianship and Administration Act 2000	17 18
This chapter does not affect the operation of the <i>Guardianship and Administration Act 2000</i> , section 63 in relation to providing urgent health care under that Act to a person.	19 20 21 22
920 Amendment of sch 2 (Dictionary)	23
(1) Schedule 2, definitions <i>authorised person</i> and <i>health practitioner</i> —	24 25
<i>omit.</i>	26

[s 920]

(2) Schedule 2—	1
<i>insert—</i>	2
<i>administrator</i> , of an authorised mental health service, for chapter 4A, see section 157A.	3 4
<i>ambulance officer</i> , for chapter 4A, see section 157A.	5 6
<i>authorised mental health practitioner</i> , for chapter 4A, see section 157A.	7 8
<i>authorised mental health service</i> , for chapter 4A, see section 157A.	9 10
<i>authorised person—</i>	11
(a) for chapter 4A, see section 157A; or	12
(b) otherwise—see section 377.	13
<i>emergency examination authority</i> , for chapter 4A, see section 157D(1).	14 15
<i>examination period</i> , for chapter 4A, see section 157E(1).	16 17
<i>general search</i> , for chapter 4A, part 6, see section 157X.	18 19
<i>harmful thing</i> , for chapter 4A, part 6, see section 157X.	20 21
<i>health practitioner—</i>	22
(a) for chapter 4A, see section 157A; or	23
(b) for chapter 6, part 3, see section 251.	24
<i>personal search</i> , for chapter 4A, part 6, see section 157X.	25 26
<i>public sector health service facility</i> , for chapter 4A, see section 157A.	27 28
<i>scanning search</i> , for chapter 4A, part 6, see section 157X.	29 30

<i>search requiring the removal of clothing</i> , for chapter 4A, part 6, see section 157X.	1 2	
<i>security officer</i> , for chapter 4A, see section 157A.	3 4	
<i>treatment or care place</i> , for chapter 4A, see section 157A.	5 6	
Chapter 22	Minor and consequential amendments	7 8
921 Acts amended		9
Schedule 4 amends the Acts it mentions.		10

Schedule 1	Information that applicant, or applicant’s nominee, is entitled to receive under an information notice	1 2 3 4
	section 315, definition <i>information notice</i>	5
1	Information about reviews	6
	The fact, and date and time of hearing, of—	7
	(a) a review of the relevant patient’s forensic order or treatment support order; or	8 9
	(b) a review of the relevant patient’s fitness for trial.	10
2	Information about transfer application	11
	The fact, and date and time of hearing, of an application under chapter 12, part 10, division 2, for approval to transfer the relevant patient out of Queensland.	12 13 14
3	Information about tribunal decisions	15
	(1) Subject to subsection (3), a written statement of a decision of the tribunal on a review mentioned in section 1 or an application mentioned in section 2 identifying—	16 17 18
	(a) the date of the decision; and	19
	(b) the decision made.	20
	(2) For a decision on a review mentioned in section 1(a) that increases the extent of treatment in the community received by the relevant patient, a brief explanation of the reasons for the decision.	21 22 23 24
	<i>Examples of brief explanations of the reasons for a decision that increases the extent of treatment in the community received by a relevant patient—</i>	25 26
	• an authorised doctor has stated that the patient has responded well to treatment during a stated time period	27 28

	• an authorised doctor has stated that the patient has complied with limited community treatment conditions	1 2
	• the patient has participated in programs recommended by the Mental Health Court	3 4
	• the patient has undertaken to comply with non-contact conditions	5
(3)	If the decision on a review mentioned in section 1(a) changes a condition of the relevant patient's order, a written statement of the decision identifying the decision made, only if the chief psychiatrist is satisfied the decision is relevant to the safety and welfare of the person entitled to receive information under the information notice.	6 7 8 9 10 11
4	Information about appeals	12
	For an appeal relating to the relevant patient's order—	13
	(a) the fact, and date and time of hearing, of the appeal; and	14
	(b) a brief explanation of the nature of the appeal; and	15
	(c) a written statement of the decision on appeal identifying—	16 17
	(i) the date of the decision; and	18
	(ii) the decision made.	19
5	Information about absences	20
(1)	The fact that the relevant patient is a patient required to return, only if the chief psychiatrist is satisfied the information is relevant to the safety and welfare of the person entitled to receive information under the information notice.	21 22 23 24
(2)	The fact that the relevant patient has returned to an authorised mental health service, after having been required to return, if the chief psychiatrist has provided information under subsection (1) about the absence.	25 26 27 28
6	Miscellaneous information	29
(1)	The name of the authorised mental health service responsible for the relevant patient.	30 31

Schedule 1

- | | | |
|-----|--|-------------|
| (2) | The fact, and date of, a transfer of the responsibility for the relevant patient to another authorised mental health service or the forensic disability service. | 1
2
3 |
| (3) | The fact, and date of, the relevant patient's order ending under section 526. | 4
5 |
| (4) | The fact, and date of, a decision of the tribunal under section 757 to revoke the relevant patient's order. | 6
7 |

Schedule 2**Who may appeal to Mental Health Court**

1

2

section 537

3

Column 1 Decision	Column 2 Appellant
a decision of the tribunal on a review of a treatment authority under chapter 12, part 2	(a) the person subject to the authority; or (b) an interested person for the person mentioned in paragraph (a) acting on the person's behalf; or (c) the chief psychiatrist
a decision of the tribunal on a review of a forensic order (mental health) or forensic order (disability) under chapter 12, part 3	(a) the person subject to the order; or (b) an interested person for the person mentioned in paragraph (a) acting on the person's behalf; or (c) the Attorney-General; or (d) if an authorised mental health service is responsible for the person—the chief psychiatrist; or (e) if the forensic disability service is responsible for the person—the director of forensic disability
a decision of the tribunal on a review of a forensic order (Criminal Code) under chapter 12, part 4	(a) the person subject to the order; or (b) an interested person for the person mentioned in paragraph (a) acting on the person's behalf; or (c) the chief psychiatrist; or (d) the Attorney-General
a decision of the tribunal on a review of a treatment support order under chapter 12, part 5	(a) the person subject to the order; or (b) an interested person for the person mentioned in paragraph (a) acting on the person's behalf; or (c) the chief psychiatrist

Schedule 2

Column 1 Decision	Column 2 Appellant
a decision of the tribunal on a review of a person's fitness for trial under chapter 12, part 6	<ul style="list-style-type: none"> (a) the person the subject of the review; or (b) an interested person for the person mentioned in paragraph (a) acting on the person's behalf; or (c) the Attorney-General; or (d) if an authorised mental health service is responsible for the person—the chief psychiatrist; or (e) if the forensic disability service is responsible for the person—the director of forensic disability
a decision of the tribunal on a review of the detention of a minor in a high security unit under chapter 12, part 7	<ul style="list-style-type: none"> (a) the minor; or (b) an interested person for the minor acting on the minor's behalf; or (c) the chief psychiatrist
a decision of the tribunal on an application for approval to perform a regulated treatment on a person chapter 12, part 9	<ul style="list-style-type: none"> (a) the person the subject of the application; or (b) an interested person for the person mentioned in paragraph (a) acting on the person's behalf; or (c) the doctor who made the application; or (d) the chief psychiatrist
a decision of the tribunal on an application for approval of the transfer of a person into or out of Queensland under chapter 12, part 10	<ul style="list-style-type: none"> (a) the person the subject of the application; or (b) an interested person for the person mentioned in paragraph (a) acting on the person's behalf; or (c) the Attorney-General; or (d) if an authorised mental health service is responsible for the person—the chief psychiatrist; or (e) if the forensic disability service is responsible for the person—the director of forensic disability

Schedule 3	Dictionary	1
	section 9	2
	<i>administrator</i> —	3
	(a) of an authorised mental health service—means the person appointed under section 330 as the administrator of the service; or	4 5 6
	(b) of the forensic disability service—means the administrator of the service under the Forensic Disability Act.	7 8 9
	<i>administrator consent</i> , for chapter 3, see section 62.	10
	<i>advance health directive</i> means an advance health directive under the <i>Powers of Attorney Act 1998</i> .	11 12
	<i>ambulance officer</i> means an ambulance officer appointed under the <i>Ambulance Service Act 1991</i> , section 13.	13 14
	<i>applicant review</i> —	15
	(a) of a treatment authority, for chapter 12, part 2—see section 411(2); or	16 17
	(b) of a forensic order (mental health) or forensic order (disability), for chapter 12, part 3—see section 431(2); or	18 19 20
	(c) of a treatment support order, for chapter 12, part 5—see section 463(2).	21 22
	<i>applicant's nominee</i> , for chapter 10, part 6, see section 316(2)(b).	23 24
	<i>appointed person</i> , for chapter 16, part 1, division 9, see section 675.	25 26
	<i>approved device</i> see section 242.	27
	<i>approved form</i> means a form approved under section 796.	28
	<i>assessment</i> , of a person, means an assessment of the person under—	29 30

Schedule 3

- (a) chapter 2, part 3; or 1
- (b) chapter 7. 2
- assessment period**, for a person, see section 45(4). 3
- assisting clinician** see section 650(1). 4
- associated offence** see section 107. 5
- attendance notice**, for chapter 16, part 2, see section 742(1). 6
- attorney**, of a person, means— 7
 - (a) an attorney appointed by the person under an advance health directive; or 8
9
 - (b) an attorney appointed by the person under an enduring power of attorney for a personal matter. 10
11
- audiovisual link** means facilities that enable reasonably contemporaneous and continuous audio and visual communication between persons at different places. 12
13
14
- authorised doctor** means— 15
 - (a) a doctor appointed as an authorised doctor under section 336; or 16
17
 - (b) an administrator of an authorised mental health service to whom section 337 applies; or 18
19
 - (c) for a particular function or power that a class of health practitioners is authorised to perform or exercise under section 339—a health practitioner of the class who is appointed under section 339. 20
21
22
23
- authorised mental health practitioner** means a health practitioner appointed as an authorised mental health practitioner under section 338. 24
25
26
- authorised mental health service** means— 27
 - (a) a health service, or part of a health service, declared to be an authorised mental health service under section 327; or 28
29
30
 - (b) an authorised mental health service (rural and remote); 31
or 32

-
- (c) a high security unit. 1
- authorised mental health service (rural and remote)*** means 2
an authorised mental health service, or part of an authorised 3
mental health service, declared to be an authorised mental 4
health service (rural and remote) under section 329. 5
- authorised person*** see section 357. 6
- authorised psychiatrist*** means an authorised doctor who is a 7
psychiatrist. 8
- authorised security officer*** see section 382. 9
- brief of evidence*** means— 10
- (a) a brief of evidence compiled by the prosecuting 11
authority for an offence that includes any of the 12
following— 13
- (i) an indictment or bench charge sheets; 14
- (ii) summaries or particulars of allegations; 15
- (iii) witness statements; 16
- (iv) exhibits or photographs of exhibits; 17
- (v) transcripts of proceedings; 18
- (vi) a record of interview or transcript of a record of 19
interview; 20
- (vii) a person’s criminal history; or 21
- (b) an expert’s report or a person’s health record. 22
- capacity***, to consent to be treated, see section 14. 23
- care***, in relation to a person who has an intellectual disability, 24
includes the provision of rehabilitation, the development of 25
living skills, and the giving of support, assistance, information 26
and other services. 27
- carer*** means an individual who provides, in a non-contractual 28
and unpaid capacity, ongoing care or assistance to another 29
person who, because of disability, frailty, chronic illness or 30
pain, requires assistance with everyday tasks. 31
-

Schedule 3

<i>category</i> , of a treatment authority, forensic order (mental health), forensic order (disability) or treatment support order, means—	1 2 3
(a) inpatient; or	4
(b) community.	5
<i>chief executive (forensic disability)</i> means the chief executive of the department in which the Forensic Disability Act is administered.	6 7 8
<i>chief executive (justice)</i> means the chief executive of the department in which the Criminal Code is administered.	9 10
<i>chief executive (youth justice)</i> means the chief executive of the department in which the <i>Youth Justice Act 1992</i> is administered.	11 12 13
<i>chief psychiatrist</i> means the person appointed as the chief psychiatrist under section 296.	14 15
<i>classified patient</i> see section 64(1).	16
<i>classified patient (involuntary)</i> see section 64(2).	17
<i>classified patient (voluntary)</i> see section 64(3).	18
<i>close relative</i> , of a person, means—	19
(a) the person’s spouse; or	20
(b) a child, grandchild, parent, brother, sister, grandparent, aunt or uncle (whether of whole or half-blood) of the person or the person’s spouse.	21 22 23
<i>community</i> means—	24
(a) in relation to the category of a treatment authority, forensic order (mental health) or treatment support order—the person subject to the authority or order may live in the community while receiving treatment and care; or	25 26 27 28 29
(b) in relation to the category of a forensic order (disability)—the person subject to the order may live in the community while receiving care.	30 31 32

<i>condition</i> —	1
1 <i>Condition</i> , generally, does not include a condition requiring a person to wear a tracking device.	2 3
2 However, for the following sections and without limitation, <i>condition</i> includes a condition requiring a person to wear a tracking device—	4 5 6
(a) sections 135, 139 and 140;	7
(b) sections 443 to 445;	8
(c) section 135, as applied by sections 455, 460, 516 and 545.	9 10
<i>confidentiality order</i> —	11
(a) for the Mental Health Court—see section 694(1); or	12
(b) for the tribunal—see section 720(1).	13
<i>contact</i> , a person, means—	14
(a) intentionally initiate contact with the person in any way, including, for example, by phone, mail, fax, email or other technology; or	15 16 17
(b) intentionally follow, loiter near, watch or approach the person; or	18 19
(c) intentionally loiter near, watch, approach or enter a place where the person lives, works or visits.	20 21
<i>corresponding law</i> means a law of another State that is prescribed by regulation to be a corresponding law.	22 23
<i>court</i> —	24
(a) for chapter 6, part 4, see section 192; or	25
(b) for chapter 14, see section 552.	26
<i>court examination order</i> see section 666(1).	27
<i>court rules</i> means rules of court made under section 697.	28
<i>criminal history</i> , of a person, means the person's criminal history within the meaning of the <i>Criminal Law (Rehabilitation of Offenders) Act 1986</i> and—	29 30 31

- (a) despite sections 6, 8 and 9 of that Act, includes a conviction of the person to which any of the sections applies; and
- (b) despite section 5 of that Act, includes a charge made against the person for an offence.
- custodian***, of a person in custody, means the person having the lawful custody of the person.
- custodian consent***, for chapter 3, see section 62.
- decision notice***, for chapter 13, part 2, see section 530.
- deputy president*** means the deputy president of the tribunal.
- designated person***, for chapter 17, see section 774.
- diminished responsibility*** see section 108.
- director of forensic disability*** means the Director of Forensic Disability under the Forensic Disability Act.
- director of public prosecutions*** means the Director of Public Prosecutions appointed under the *Director of Public Prosecutions Act 1984*.
- dual disability***, for a person, means the person has—
- (a) a mental illness; and
- (b) an intellectual disability.
- electroconvulsive therapy*** means the application of electric current to specific areas of the head to produce a generalised seizure that is modified by general anaesthesia and the administration of a muscle relaxing agent for the treatment of a mental illness.
- electronic document***, for chapter 14, see section 552.
- emergency examination authority*** see the *Public Health Act 2005*, section 157D(1).
- employ*** includes engage on a contract for services.
- enduring power of attorney for a personal matter*** means an enduring power of attorney for a personal matter within the meaning of the *Powers of Attorney Act 1998*.

<i>examination authority</i> see section 500(1).	1
<i>examination order</i> see section 177(2).	2
<i>examination report</i> , for chapter 6, part 2, division 3, see section 179.	3 4
<i>examining practitioner</i> means—	5
(a) a psychiatrist; or	6
(b) a health practitioner other than a psychiatrist; or	7
(c) a person with expertise in the care of persons who have an intellectual disability.	8 9
<i>executive officer</i> , of the tribunal, means the person appointed as the executive officer mentioned in section 711.	10 11
<i>expert's report</i> see section 156.	12
<i>finding of unfitness</i> , in relation to a person, see section 483.	13
<i>Forensic Disability Act</i> means the <i>Forensic Disability Act 2011</i> .	14 15
<i>forensic disability client</i> means a forensic disability client under the Forensic Disability Act.	16 17
<i>forensic disability service</i> means the forensic disability service under the Forensic Disability Act.	18 19
<i>forensic order</i> means—	20
(a) a forensic order (mental health); or	21
(b) a forensic order (disability); or	22
(c) a forensic order (Criminal Code).	23
<i>forensic order (Criminal Code)</i> means an order made under the Criminal Code, section 613, 645 or 647 that a person be admitted to a stated authorised mental health service to be dealt with under this Act.	24 25 26 27
<i>forensic order (disability)</i> see section 134(1).	28
<i>forensic order (mental health)</i> see section 134(1).	29
<i>forensic patient</i> means a person subject to a forensic order.	30
<i>former owner</i> , for chapter 14, see section 588(1).	31

general power , for chapter 14, see section 575(1).	1
general search , for chapter 11, part 7, see section 382.	2
government entity , for chapter 17, see section 774.	3
harm includes physical, psychological and emotional harm.	4
harmful thing means anything—	5
(a) that may be used to—	6
(i) threaten the security or good order of an authorised mental health service or public sector health service facility; or	7 8 9
(ii) threaten a person’s health or safety; or	10
(b) that, if used by a patient in an authorised mental health service or public sector health service facility, is likely to adversely affect the patient’s treatment or care.	11 12 13
<i>Examples of harmful things—</i>	14
• a dangerous drug	15
• alcohol	16
• medication	17
• provocative or offensive documents	18
health practitioner means a person registered under the Health Practitioner Regulation National Law, or another person who provides health services, including, for example, a social worker.	19 20 21 22
health record , for a person, means the person’s hospital record or another document recording the person’s health history, condition and treatment.	23 24 25
health service means a service for maintaining, improving and restoring people’s health and wellbeing, and includes a community health facility.	26 27 28
health service chief executive see the <i>Hospital and Health Boards Act 2011</i> , schedule 2.	29 30
health service employee see the <i>Hospital and Health Boards Act 2011</i> , schedule 2.	31 32
help requirement , for chapter 14, see section 576(1).	33

-
- high security unit*** means a public sector mental health service, or part of a public sector mental health service, declared to be a high security unit under section 328. 1
2
3
- Hospital and Health Service*** means a Hospital and Health Service established under the *Hospital and Health Boards Act 2011*, section 17. 4
5
6
- identity card*** means— 7
- (a) for an authorised doctor, authorised mental health practitioner or health practitioner appointed under section 339 to perform particular functions—an identity card issued under section 344; or 8
9
10
11
- (b) for an authorised security officer—an identity card approved under section 404; or 12
13
- (c) for an inspector—an identity card issued under section 558. 14
15
- independent patient rights adviser*** means a person appointed as an independent patient rights adviser under section 291(2). 16
17
- information notice***— 18
- (a) relating to a relevant patient—see section 315; or 19
- (b) about a decision, for chapter 14—see section 552. 20
- information requirement***, for chapter 14, see section 595(3). 21
- informed consent***, to a person’s treatment by regulated treatment, see section 232. 22
23
- inpatient*** means— 24
- (a) in relation to the category of a treatment authority, forensic order (mental health) or treatment support order, the person subject to the authority or order— 25
26
27
- (i) must be detained in an inpatient unit of an authorised mental health service while receiving treatment and care; and 28
29
30
- (ii) may receive limited community treatment; or 31
- (b) in relation to the category of a forensic order (disability), the person subject to the order— 32
33
-

Schedule 3

- (i) must be detained in an inpatient unit of an authorised mental health service, or in the forensic disability service, while receiving care; and
 - (ii) may receive limited community treatment.
- inpatient unit***, of an authorised mental health service, means a part of the service to which patients are admitted for treatment and care and discharged on a day other than the day of admission.
- inspector*** see section 552.
- intellectual disability*** means—
- (a) an intellectual disability within the meaning of the Forensic Disability Act; or
 - (b) a cognitive disability within the meaning of the Forensic Disability Act.
- interested person***, for a person, means—
- (a) the person’s nominated supported person; or
 - (b) another individual who has a sufficient interest in the person.
- internal review decision***, for chapter 14, part 8, see section 606(1)(b).
- interstate forensic order***, for chapter 12, part 10, division 1, see section 511.
- interstate mental health service*** means a health service in another State that performs corresponding, or substantially corresponding, functions to an authorised mental health service.
- interstate transfer requirements***—
- (a) for chapter 12, part 10, division 1, see section 511; or
 - (b) for chapter 12, part 10, division 2, see section 519.
- investigation report***, for chapter 10, see section 307(1).
- involuntary patient*** see section 11.

<i>judicial order</i> means—	1
(a) a court examination order; or	2
(b) an examination order; or	3
(c) another order, requiring or permitting the detention of a person in an authorised mental health service, made by a court under any of the following—	4 5 6
(i) section 124(1)(b);	7
(ii) section 183(c)(ii);	8
(iii) section 193(2);	9
(iv) section 542(4);	10
(v) section 549(4)(b).	11
<i>less restrictive way</i> , for a person to receive treatment and care for the person’s mental illness, see section 13.	12 13
<i>limited community treatment</i> means treatment and care of a person in the community, including in the grounds and buildings (other than an inpatient unit) of an authorised mental health service, for a period of not more than 7 consecutive days, that is authorised under this Act.	14 15 16 17 18
<i>mechanical restraint</i> see section 243.	19
<i>medication</i> , for chapter 8, part 5, division 2, see section 270.	20
<i>member</i> , of the tribunal, means a member of the tribunal, and includes the president and deputy president.	21 22
<i>mental condition</i> includes a mental illness and an intellectual disability.	23 24
<i>mental illness</i> see section 10.	25
<i>nominated support person</i> see section 223(1).	26
<i>non-ablative neurosurgical procedure</i> means a procedure on the brain, that does not involve deliberate damage to or removal of brain tissue, for the treatment of a mental illness.	27 28 29
<i>non-revocation period</i> , for a forensic order (mental health) or forensic order (disability), see section 137(2).	30 31
<i>notice event</i> , for chapter 3, see section 81(1).	32

occupier , of a place, includes the following—	1
(a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;	2 3
(b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;	4 5
(c) if no-one apparently occupies the place—any person who is an owner of the place.	6 7
of , a place, includes at or on the place.	8
offence , in relation to a reference, see section 106.	9
offence warning , for chapter 14, see section 552.	10
official , for chapter 15, part 4, see section 622.	11
original decision , for chapter 14, part 8, see section 606(1)(a).	12
owner , for chapter 14, see section 552.	13
parent , of a minor, includes—	14
(a) a guardian of the minor; and	15
(b) a person who exercises parental responsibility for the minor, other than a person standing in the place of a parent of the minor on a temporary basis; and	16 17 18
(c) for an Aboriginal minor—a person who, under Aboriginal tradition, is regarded as a parent of the minor; and	19 20 21
(d) for a Torres Strait Islander minor—a person who, under Island custom, is regarded as a parent of the minor.	22 23
party —	24
(a) to an appeal—	25
(i) for chapter 13, part 2, see section 530; or	26
(ii) for chapter 13, part 3, see section 536; or	27
(b) to a proceeding, for chapter 16, part 2, see section 701.	28
patient —	29
(a) for chapter 8—see section 242; or	30
(b) for chapter 9—see section 274; or	31

-
- (c) for chapter 10—see section 295. 1
- patient required to return*** means a patient— 2
- (a) in relation to whom the administrator of an authorised 3
mental health service, or person in charge of a public 4
sector health service facility, has given an authorisation 5
or made a request under section 362; and 6
- (b) who has not been transported under the authorisation or 7
request, or come or returned voluntarily, to the service 8
or facility. 9
- periodic review***— 10
- (a) of a treatment authority, for chapter 12, part 2—see 11
section 411(1); or 12
- (b) of a forensic order (mental health) or forensic order 13
(disability), for chapter 12, part 3—see section 431(1); 14
or 15
- (c) of a treatment support order, for chapter 12, part 5—see 16
section 463(1). 17
- personal details requirement***, for chapter 14, see section 18
593(5). 19
- personal guardian***, of a person, means a guardian for a 20
personal matter appointed by QCAT for the person under the 21
Guardianship and Administration Act 2000. 22
- personal information***, for chapter 17, see section 774. 23
- personal search***, for chapter 11, part 7, see section 382. 24
- person in control***, for chapter 14, see section 552. 25
- person in custody*** see section 63. 26
- physical restraint*** see section 267. 27
- place*** includes the following— 28
- (a) premises; 29
- (b) vacant land; 30
- (c) a place in Queensland waters; 31
-

Schedule 3

- (d) a place held under more than 1 title or by more than 1 owner; 1
2
- (e) the land or water where a building or structure, or a group of buildings or structures, is situated. 3
4
- place of custody***, for a person in custody, means the place at which the person is held in lawful custody under an Act of the State, other than this Act, or an Act of the Commonwealth. 5
6
7
- policy*** means a policy made by the chief psychiatrist under section 272 or 303. 8
9
- postal article***, for chapter 11, part 7, see section 382. 10
- practice guideline*** means a practice guideline made by the chief psychiatrist under section 303. 11
12
- premises*** includes— 13
 - (a) a building or other structure; and 14
 - (b) a part of a building or other structure; and 15
 - (c) a caravan or vehicle; and 16
 - (d) a cave or tent; and 17
 - (e) premises held under more than 1 title or by more than 1 owner. 18
19
- prescribed offence*** means an offence against any of the following provisions of the Criminal Code— 20
21
 - (a) section 302 (Definition of *murder*) and 305 (Punishment of murder); 22
23
 - (b) section 303 (Definition of *manslaughter*) and 310 (Punishment of manslaughter); 24
25
 - (c) section 306 (Attempt to murder); 26
 - (d) section 317 (Acts intended to cause grievous bodily harm and other malicious acts); 27
28
 - (e) section 320 (Grievous bodily harm); 29
 - (f) section 349 (Rape); 30
 - (g) section 350 (Attempt to commit rape); 31

-
- (h) section 351 (Assault with intent to commit rape). 1
- president** means— 2
- (a) for chapter 16, part 1—the president of the Mental 3
Health Court; or 4
- (b) for chapter 16, part 2—the president of the tribunal. 5
- presiding member**, of the tribunal for a proceeding, means the 6
tribunal member who, under section 718, is the presiding 7
member of the tribunal for the proceeding. 8
- prosecuting authority**, for an offence, means the 9
commissioner of the police service, director of public 10
prosecutions or other entity responsible for prosecuting the 11
proceeding for the offence. 12
- psychiatrist** means— 13
- (a) a person registered under the Health Practitioner 14
Regulation National Law to practise in the medical 15
profession as a specialist registrant in the speciality of 16
psychiatry; or 17
- (b) a person registered under the Health Practitioner 18
Regulation National Law to practise in the medical 19
profession who is able to practise psychiatry as another 20
type of registrant prescribed by regulation. 21
- psychiatrist report** see section 87. 22
- psychosurgery** means a procedure on the brain, that involves 23
deliberate damage to or removal of brain tissue, for the 24
treatment of a mental illness. 25
- public place** means— 26
- (a) a place, or part of the place— 27
- (i) the public is entitled to use, is open to members of 28
the public or is used by the public, whether or not 29
on payment of money; or 30
- Examples of a place that may be a public place under 31
subparagraph (i)— 32*
- a beach, a park, a road 33
-

(ii) the occupier of which allows, whether or not on payment of money, members of the public to enter; or	1 2 3
<i>Examples of a place that may be a public place under subparagraph (ii)—</i>	4 5
a saleyard, a showground	6
(b) a place that is a public place under another Act.	7
public sector health service see the <i>Hospital and Health Boards Act 2011</i> , schedule 2.	8 9
public sector health service facility see the <i>Hospital and Health Boards Act 2011</i> , schedule 2.	10 11
public sector mental health service means an authorised mental health service that is a public sector health service.	12 13
publish means—	14
(a) publish to the public by way of television, newspaper, radio, the internet or other form of communication; and	15 16
(b) the public dissemination of information, including, for example, distributing information by leaflets in letterboxes, or announcing information at a meeting.	17 18 19
purpose of limited community treatment means the purpose of limited community treatment under section 16.	20 21
reasonable time of the day or night , for chapter 9, part 3, see section 278.	22 23
reasonably suspects , for chapter 14, see section 552.	24
recommendation for assessment , for a person, means a recommendation for assessment for the person made under section 39.	25 26 27
records system , for chapter 7, part 8, see section 225(1).	28
reduction and elimination plan , for chapter 8, see section 263.	29 30
reference , in relation to a person, see section 106.	31
registrar means the registrar of the Mental Health Court.	32
registry means the Mental Health Court Registry.	33

<i>regulated treatment</i> see section 231.	1
<i>relevant circumstances</i> , of a person, means each of the following—	2 3
(a) the person’s mental state and psychiatric history;	4
(b) any intellectual disability of the person;	5
(c) the person’s social circumstances, including, for example, family and social support;	6 7
(d) the person’s response to treatment and care and the person’s willingness to receive appropriate treatment and care;	8 9 10
(e) if relevant, the person’s response to previous treatment in the community.	11 12
<i>relevant court</i> , for chapter 12, part 6, division 3, see section 493.	13 14
<i>relevant forensic patient</i> , for chapter 10, part 5, see section 309.	15 16
<i>relevant offence</i> —	17
(a) for chapter 12, part 6, division 2, see section 487; or	18
(b) for chapter 12, part 6, division 3, see section 492.	19
<i>relevant patient</i> —	20
(a) for chapter 8, see section 242; or	21
(b) for chapter 10, part 6 and schedule 1, see section 315.	22
<i>relevant person</i> , for chapter 16, part 2, division 6, subdivision 2, see section 726(1)(a) and (2)(a).	23 24
<i>relevant service</i> , for chapter 16, part 1, division 9, see section 670.	25 26
<i>relevant unlawful act</i> —	27
(a) in relation to a reference—see section 129; or	28
(b) in relation to a forensic order (mental health), forensic order (disability), forensic order (Criminal Code) or treatment support order, means the unlawful act that led to the making of—	29 30 31 32

Schedule 3

(i)	the order; or	1
(ii)	a forensic order that ended or was revoked on the making of the order mentioned in subparagraph (i); or	2 3 4
(iii)	a forensic order that ended or was revoked on the making of the order mentioned in subparagraph (ii).	5 6 7
	<i>Notes—</i>	8
1	See section 459 for the making of a forensic order (mental health) or forensic order (disability) for a person subject to a forensic order (Criminal Code).	9 10 11
2	See section 455 for the making of a forensic order (disability) on the revocation of a forensic order (mental health).	12 13 14
3	See section 448 for the making of a treatment support order on the revocation of forensic order (mental health).	15 16
	<i>remote conferencing</i> means—	17
(a)	teleconferencing; or	18
(b)	videoconferencing; or	19
(c)	another form of communication that allows persons taking part in the proceeding to hear and take part in discussions as they happen.	20 21 22
	<i>report</i> , for chapter 17, part 4, see section 786.	23
	<i>required information</i> , for chapter 8, see section 242.	24
	<i>required time and way</i> , for chapter 8, see section 242.	25
	<i>responsible officer</i> , of an interstate mental health service, means an entity responsible for—	26 27
(a)	authorising the admission of persons who have a mental illness, who are from another State, to the interstate mental health service; or	28 29 30
(b)	authorising the transfer of persons who have a mental illness from the interstate mental health service to another State.	31 32 33

<i>restraint, seclusion and other practices policy</i> see section 272(1).	1 2
<i>review</i> —	3
(a) of a treatment authority, for chapter 12, part 2—see section 409; or	4 5
(b) of a forensic order (mental health) or forensic order (disability), for chapter 12, part 3—see section 429; or	6 7
(c) of a treatment support order, for chapter 12, part 5—see section 461.	8 9
<i>review notice</i> , for chapter 14, part 8, see section 606(1)(c).	10
<i>review notice day</i> , for chapter 14, part 8, see section 606(2)(a).	11 12
<i>review period</i> , for chapter 2, part 4, see section 56.	13
<i>scanning search</i> , for chapter 11, part 7, see section 382.	14
<i>scheduled review</i> , for chapter 16, part 2, division 6, subdivision 2, see section 726(1)(b) and (2)(b).	15 16
<i>search requiring the removal of clothing</i> , for chapter 11, part 7, see section 382.	17 18
<i>seclusion</i> see section 253.	19
<i>section 613 finding</i> see section 189(2), definition <i>relevant finding</i> , paragraph (a).	20 21
<i>section 645 finding</i> see section 189(2), definition <i>relevant finding</i> , paragraph (b).	22 23
<i>second psychiatrist report</i> see section 100(2).	24
<i>security officer</i> , for chapter 11, part 7, see section 382.	25
<i>serious offence</i> means an indictable offence, other than an offence that is a relevant offence under the Criminal Code, section 552BA(4).	26 27 28
<i>Note</i> —	29
Under the Criminal Code, section 552BA, a charge of an indictable offence that is a relevant offence must, subject to the Criminal Code, section 552D, be heard and decided summarily.	30 31 32
<i>simple offence</i> see section 171.	33

<i>staff</i> , of the tribunal, means a person employed under section 711.	1 2
<i>statement of rights</i> see section 275(1).	3
<i>support person</i> , of another person, includes a personal guardian or attorney of the person.	4 5
<i>tracking device</i> means an electronic device capable of being worn, and not removed, by a person for the purpose of finding or monitoring the geographical location of the person.	6 7 8
<i>transfer considerations</i> , for chapter 11, part 5, see section 348.	9 10
<i>transfer recommendation</i> , for chapter 3, see section 68(2).	11
<i>transport</i> , of a person, includes the use of physical restraint to move the person.	12 13
<i>treating health service</i> , for a person, means the authorised mental health service responsible for the person's treatment and care.	14 15 16
<i>treatment</i> , of a person who has a mental illness or other mental condition, includes anything done, or to be done, with the intention of having a therapeutic effect on the person's illness, including the provision of a diagnostic procedure.	17 18 19 20
<i>treatment authority</i> see section 49.	21
<i>treatment criteria</i> see section 12.	22
<i>treatment in the community</i> means—	23
(a) for a person subject to a treatment authority, forensic order (mental health) or treatment support order—	24 25
(i) if the category of the authority or order is inpatient—limited community treatment; or	26 27
(ii) if the category of the authority or order is community—treatment and care of the person under the order while the person is living in the community; or	28 29 30 31
(b) for a person subject to a forensic order (disability)—	32

-
- (i) if the category of the order is inpatient—limited community treatment; or 1
2
- (ii) if the category of the order is community—care of the person under the order while the person is living in the community. 3
4
5
- treatment support order*** see section 143(1). 6
- tribunal*** means the Mental Health Review Tribunal continued under section 702. 7
8
- tribunal review***— 9
- (a) of a treatment authority, for chapter 12, part 2—see section 411(3) and (4); or 10
11
- (b) of a forensic order (mental health) or forensic order (disability), for chapter 12, part 3—see section 431(3) and (4); or 12
13
14
- (c) of a treatment support order, for chapter 12, part 5—see section 463(3) and (4). 15
16
- tribunal rules*** means rules of court made under section 766. 17
- unit***, for chapter 8, see section 242. 18
- unlawful act***, of a person, includes an act or omission of the person constituting an offence with which the person is charged. 19
20
21
- unsound mind*** see section 109. 22
- vehicle***— 23
- (a) means a vehicle under the *Transport Operations (Road Use Management) Act 1995*; and 24
25
- (b) includes a vessel under that Act. 26
- victim***, of an unlawful act, means a person against whom the unlawful act was committed or allegedly committed. 27
28
- victim impact statement***, in relation to an unlawful act, means a written statement that— 29
30
- (a) is signed and dated; and 31
-

Schedule 3

- (b) states the particulars of the harm caused to a victim, or close relative of the victim, by the unlawful act; and 1
2
 - (c) may have attached to it— 3
 - (i) documents supporting the particulars, including, for example, medical reports; or 4
5
 - (ii) photographs, drawings or other images. 6
- victim support service*** means an entity in a Hospital and Health Service, or the department, that provides support services to victims of unlawful acts. 7
8
9
- warrant for apprehension*** means a warrant for apprehension issued under section 376. 10
11

Schedule 4	Minor or consequential amendments of particular legislation	1 2 3
	section 921	4
Bail Act 1980		5
1	Particular references to Mental Health Act 2000	6
	Each of the following provisions is amended by omitting ‘ <i>Mental Health Act 2000</i> ’ and inserting ‘ <i>Mental Health Act 2015</i> ’—	7 8 9
	• section 11(6)(a)	10
	• section 21(1)(c)(i)	11
Child Protection (Offender Prohibition Order) Act 2008		12
1	Schedule, definition <i>forensic order</i>—	13
	<i>omit, insert—</i>	14
	<i>forensic order</i> means a following order under the <i>Mental Health Act 2015</i> —	15 16
	(a) a forensic order (mental health);	17
	(b) a forensic order (disability);	18
	(c) a forensic order (Criminal Code).	19
Child Protection (Offender Reporting) Act 2004		20
1	Section 13(7) and (8), ‘<i>Mental Health Act 2000</i>, chapter 8, part 2’—	21 22
	<i>omit, insert—</i>	23

	<i>Mental Health Act 2015</i>	1
2	Section 13(9), ‘Mental Health Act 2000, section 203’—	2
	<i>omit, insert—</i>	3
	<i>Mental Health Act 2015, section 439</i>	4
3	Section 25(1)(c), example, ‘Mental Health Act 2000’—	5
	<i>omit, insert—</i>	6
	<i>Mental Health Act 2015</i>	7
4	Section 58(1)—	8
	<i>omit, insert—</i>	9
	(1) As soon as practicable before or after a decision	10
	mentioned in any of the following provisions of	11
	the <i>Mental Health Act 2015</i> is made in relation to	12
	a forensic reportable offender, the supervising	13
	authority is authorised and directed to give	14
	written notice of that fact to the police	15
	commissioner—	16
	(a) chapter 5, part 4, division 2, subdivision 2;	17
	(b) section 221;	18
	(c) chapter 12, part 3, division 4;	19
	(d) section 523.	20
5	Schedule 5, definition <i>forensic order</i>—	21
	<i>omit, insert—</i>	22
	<i>forensic order</i> means a following order under the	23
	<i>Mental Health Act 2015—</i>	24
	(a) a forensic order (mental health);	25
	(b) a forensic order (disability);	26
	(c) a forensic order (Criminal Code).	27

6	Schedule 5, definition <i>forensic reportable offender</i>, 'Mental Health Act 2000'—	1 2
	<i>omit, insert—</i>	3
	<i>Mental Health Act 2015</i>	4
Commissions of Inquiry Act 1950		5
1	Section 5B(3), definition <i>administrator</i>, paragraph (a), 'declared under the <i>Mental Health Act 2000</i> to be'—	6 7
	<i>omit, insert—</i>	8
	appointed under the <i>Mental Health Act 2015</i> as	9
2	Section 5B(3), definition <i>authorised mental health service</i>, '<i>Mental Health Act 2000</i>, schedule'—	10 11
	<i>omit, insert—</i>	12
	<i>Mental Health Act 2015</i> , schedule 3	13
3	Section 5B(3), definition <i>involuntary patient</i>, '<i>Mental Health Act 2000</i>, schedule'—	14 15
	<i>omit, insert—</i>	16
	<i>Mental Health Act 2015</i> , schedule 3	17
Coroners Act 2003		18
1	Section 9(1)(aa)(ii), 'section 37 or'—	19
	<i>omit.</i>	20
2	Section 9(1)(aa)(iii), 'limited'—	21
	<i>omit.</i>	22

3	Section 9(1)(b)—	1
	<i>omit, insert—</i>	2
	(b) the person was—	3
	(i) being detained in an authorised mental health service as an involuntary patient under the <i>Mental Health Act 2015</i> ; or	4 5 6
	(ii) being detained in a public sector health service facility or authorised mental health service under an emergency examination authority under the <i>Public Health Act 2005</i> ; or	7 8 9 10 11
	(iii) being transported to or from an authorised mental health service under the <i>Mental Health Act 2015</i> ; or	12 13 14
	(iv) undertaking limited community treatment under the <i>Mental Health Act 2015</i> while in the physical presence of a health service employee; or	15 16 17 18
	(v) temporarily absent from an authorised mental health service under an approval given under the <i>Mental Health Act 2015</i> , section 221 while in the physical presence of a health service employee; or	19 20 21 22 23 24
4	Particular references to Mental Health Act 2000	25
	Each of the following provisions is amended by omitting ‘ <i>Mental Health Act 2000</i> ’ and inserting ‘ <i>Mental Health Act 2015</i> ’—	26 27 28
	• section 9(4), definition <i>authorised mental health service</i>	29
	• section 10(2), definition <i>custody</i> , paragraph (c)(ii)	30
	• section 47(3), definition <i>relevant Act</i> , paragraph (a)(iv)	31

Corrective Services Act 2006	1
1 Particular references to Mental Health Act 2000	2
Each of the following provisions is amended by omitting	3
‘ <i>Mental Health Act 2000</i> ’ and inserting ‘ <i>Mental Health Act</i>	4
<i>2015</i> ’—	5
• section 6(3)(d)	6
• section 68(5)	7
• schedule 4, definition <i>authorised mental health service</i>	8
• schedule 4, definition <i>prisoner</i> , paragraph 1(b)	9
2 Section 319S(2)(b), ‘<i>Mental Health Act 2000</i>, chapter 7, part 6’—	10
<i>omit, insert—</i>	11
<i>Mental Health Act 2015</i> , chapter 5, part 3	12
	13
Crime and Corruption Act 2001	14
1 Section 83(2)—	15
<i>omit, insert—</i>	16
(2) If the attendance before the commission of a	17
patient detained in an authorised mental health	18
service under the <i>Mental Health Act 2015</i> is	19
required, the chairman may, by notice given to	20
the administrator of the service, direct the	21
administrator to produce the patient named in the	22
notice at a stated time and place.	23
2 Section 83(6), definitions <i>administrator</i>, <i>Mental Health Act</i> and <i>patient</i>—	24
<i>omit.</i>	25
	26

3	Section 83(6)—	1
	<i>insert—</i>	2
	<i>administrator</i> , of an authorised mental health service, see the <i>Mental Health Act 2015</i> , schedule 3.	3 4 5
	<i>authorised mental health service</i> see the <i>Mental Health Act 2015</i> , schedule 3.	6 7

Criminal Law Amendment Act 1945 8

1	Section 18(8) and (8A), ‘director of mental health’—	9
	<i>omit, insert—</i>	10
	chief psychiatrist	11

2	Section 18(14), definition <i>director of mental health</i>—	12
	<i>omit.</i>	13

3	Section 18(14)—	14
	<i>insert—</i>	15
	<i>chief psychiatrist</i> see the <i>Mental Health Act 2015</i> , schedule 3.	16 17

Criminal Proceeds Confiscation Act 2002 18

1	Section 112(1)(a), ‘<i>Mental Health Act 2000</i>, chapter 7, part 6’—	19 20
	<i>omit, insert—</i>	21
	<i>Mental Health Act 2015</i> , chapter 5, part 3	22

Disability Services Act 2006		1
1	Section 120(2)(a)(i), ‘condition’—	2
	<i>omit, insert—</i>	3
	state	4
2	Section 123(1)(b), ‘condition’—	5
	<i>omit, insert—</i>	6
	state	7
3	Section 123(5)(a), ‘Mental Health Act 2000, section 284’—	8
	<i>omit, insert—</i>	9
	<i>Mental Health Act 2015, section 163</i>	10
4	Section 123(9)(a), ‘Mental Health Act 2000, section 426’—	11
	<i>omit, insert—</i>	12
	<i>Mental Health Act 2015, section 694</i>	13
5	Section 123(9)(b), ‘Mental Health Act 2000, section 318’—	14
	<i>omit, insert—</i>	15
	<i>Mental Health Act 2015, section 160</i>	16
6	Section 123(10), ‘Mental Health Act 2000, section 318(2)’—	17
	<i>omit, insert—</i>	18
	<i>Mental Health Act 2015, section 160(2)</i>	20
7	Section 124(1)(b), ‘the person’s mental condition under the Mental Health Act 2000, chapter 6, part 3 or 4’—	21
	<i>omit, insert—</i>	22
		23

	a forensic order to which the person is subject, or the person's fitness for trial, under the <i>Mental Health Act 2015</i> , chapter 12, part 3, 4 or 6	1 2 3
8	Section 124(2)(c), 'under the <i>Mental Health Act 2000</i>, section 203A'— <i>omit, insert—</i> or other person mentioned in the <i>Mental Health Act 2015</i> , section 452	4 5 6 7 8
9	Section 124(5)(a), '<i>Mental Health Act 2000</i>, section 464'— <i>omit, insert—</i> <i>Mental Health Act 2015</i> , section 155 or 740	9 10 11
10	Section 124(9), '<i>Mental Health Act 2000</i>, section 458'— <i>omit, insert—</i> <i>Mental Health Act 2015</i> , section 720	12 13 14
11	Section 128(1)(b), 'condition'— <i>omit, insert—</i> state	15 16 17
12	Section 128(4)(a), '<i>Mental Health Act 2000</i>, section 284'— <i>omit, insert—</i> <i>Mental Health Act 2015</i> , section 163	18 19 20
13	Section 128(4)(c), '<i>Mental Health Act 2000</i>, section 426'— <i>omit, insert—</i> <i>Mental Health Act 2015</i> , section 694	21 22 23

14	Section 128(7), ‘Mental Health Act 2000, section 318’—	1
	<i>omit, insert—</i>	2
	<i>Mental Health Act 2015, section 160</i>	3
15	Section 128(8), ‘Mental Health Act 2000, section 318(2)’—	4
	<i>omit, insert—</i>	5
	<i>Mental Health Act 2015, section 160(2)</i>	6
16	Section 129(1)(b), ‘the person’s mental condition under the <i>Mental Health Act 2000</i>, chapter 6, part 3 or 4’—	7
	<i>omit, insert—</i>	8
	a forensic order to which the person is subject, or the	10
	person’s fitness for trial, under the <i>Mental Health Act</i>	11
	<i>2015</i> , chapter 12, part 3, 4 or 6	12
17	Section 129(2)(c), ‘under the <i>Mental Health Act 2000</i>, section 203A’—	13
	<i>omit, insert—</i>	14
	or other person mentioned in the <i>Mental Health Act</i>	15
	<i>2015</i> , section 452	16
18	Section 129(4)(a), ‘Mental Health Act 2000, section 464’—	18
	<i>omit, insert—</i>	19
	<i>Mental Health Act 2015, section 155 or 740</i>	20
19	Section 129(4)(c), ‘Mental Health Act 2000, section 458’—	21
	<i>omit, insert—</i>	22
	<i>Mental Health Act 2015, section 720</i>	23
20	Section 144, definition <i>director of mental health</i>—	24
	<i>omit.</i>	25

21	Section 144—	1
	<i>insert—</i>	2
	<i>chief psychiatrist</i> see the <i>Mental Health Act 2015</i> , schedule 3.	3 4
22	Section 144, definition <i>authorised psychiatrist</i>, ‘<i>Mental Health Act 2000</i>, schedule’—	5 6
	<i>omit, insert—</i>	7
	<i>Mental Health Act 2015</i> , schedule 3	8
23	Section 145(4), definition <i>mental illness</i>, ‘<i>Mental Health Act 2000</i>, section 12’—	9 10
	<i>omit, insert—</i>	11
	<i>Mental Health Act 2015</i> , section 10	12
24	Particular references to involuntary treatment order under <i>Mental Health Act 2000</i>	13 14
	Each of the following provisions is amended by omitting ‘or involuntary treatment order under the <i>Mental Health Act 2000</i> ’ and inserting ‘, treatment support order or treatment authority under the <i>Mental Health Act 2015</i> ’—	15 16 17 18
	• section 159(1)(a)(i)	19
	• section 162(b)	20
	• section 164(5)(b)	21
	• section 175(1)(b)	22
	• section 177(1)(c)	23
25	Particular references to treatment under <i>Mental Health Act 2000</i>	24 25
	Each of the following provisions is amended by omitting ‘treatment of the adult under the <i>Mental Health Act 2000</i> ’ and	26 27

	inserting ‘treating the adult under the <i>Mental Health Act 2015</i> ’—	1 2
	• section 159(2)(a)	3
	• section 175(3)(a)	4
	• section 176(1)(a)	5
	• section 176(3), definition <i>consult</i>	6
26	Section 156(3)(d)—	7
	<i>omit, insert—</i>	8
	(d) if the chief executive is aware the adult is subject to a forensic order, treatment support order or treatment authority under the <i>Mental Health Act 2015</i> —the authorised psychiatrist responsible for treating the adult under that Act;	9 10 11 12 13 14
27	Section 163(3)—	15
	<i>omit, insert—</i>	16
	(3) However, if the chief executive is deciding whether a change should be made because the adult is subject to a forensic order, treatment support order or treatment authority under the <i>Mental Health Act 2015</i> , the chief executive must consult the authorised psychiatrist responsible for treating the adult under that Act.	17 18 19 20 21 22 23
28	Section 173(2)(b)—	24
	<i>omit, insert—</i>	25
	(b) if the provider is aware the adult is subject to a forensic order, treatment support order or treatment authority under the <i>Mental Health Act 2015</i> —ensure the authorised psychiatrist responsible for treating the adult under that Act is given the opportunity to	26 27 28 29 30 31

	participate in the development of the	1
	positive behaviour support plan; and	2
29	Part 6, division 4, subdivision 3, hdg, ‘or involuntary treatment order’	3 4
	<i>omit, insert—</i>	5
	, treatment support order or treatment authority	6
30	Particular references to director of mental health	7
	Each of the following provisions is amended by omitting	8
	‘director of mental health’ and inserting ‘chief psychiatrist’—	9
	• section 164(6), definition <i>relevant director</i> , paragraph	10
	(b)	11
	• section 177(3), definition <i>relevant director</i> , paragraph	12
	(b)	13
31	Section 178(4)(b)—	14
	<i>omit, insert—</i>	15
	(b) if the chief executive is aware the adult is	16
	subject to a forensic order, treatment support	17
	order or treatment authority under the	18
	<i>Mental Health Act 2015</i> —the authorised	19
	psychiatrist responsible for treating the adult	20
	under that Act;	21
32	Section 192(2)(c)—	22
	<i>omit, insert—</i>	23
	(c) if the relevant service provider is aware the	24
	adult is subject to a forensic order, treatment	25
	support order or treatment authority under	26
	the <i>Mental Health Act 2015</i> —the terms of	27
	the order or authority.	28

33	Schedule 8, definition <i>director of mental health</i>—	1
	<i>omit.</i>	2
34	Schedule 8—	3
	<i>insert—</i>	4
	<i>chief psychiatrist</i> , for part 6, see section 144.	5
Guardianship and Administration Act 2000		6
1	Section 13A(6)(f)—	7
	<i>omit, insert—</i>	8
	(f) if the individual is subject to a forensic	9
	order, treatment support order or treatment	10
	authority under the <i>Mental Health Act</i>	11
	<i>2015</i> —the chief psychiatrist.	12
2	Section 29(1)(c)(vi)—	13
	<i>omit, insert—</i>	14
	(vi) if the adult is subject to a forensic	15
	order, treatment support order or	16
	treatment authority under the <i>Mental</i>	17
	<i>Health Act 2015</i> —the chief	18
	psychiatrist;	19
3	Section 65(4), note, ‘psychosurgery’—	20
	<i>omit, insert—</i>	21
	a non-ablative neurosurgical procedure	22
4	Section 68(1), ‘psychosurgery’—	23
	<i>omit, insert—</i>	24
	a non-ablative neurosurgical procedure	25

5	Section 80U, definition <i>authorised psychiatrist</i>, ‘<i>Mental Health Act 2000</i>, schedule’—	1 2
	<i>omit, insert—</i>	3
	<i>Mental Health Act 2015</i> , schedule 3	4
6	Section 80W(1)(b)—	5
	<i>omit, insert—</i>	6
	(b) if the tribunal is aware the adult is subject to a forensic order, treatment support order or treatment authority under the <i>Mental Health Act 2015</i> —	7 8 9 10
	(i) the terms of the order or authority; and	11
	(ii) the views of the authorised psychiatrist responsible for treating the adult under that Act about the containment or seclusion of the adult;	12 13 14 15
7	Section 80W(1)(c)(i), ‘<i>Mental Health Act 2000</i>’—	16
	<i>omit, insert—</i>	17
	<i>Mental Health Act 2015</i>	18
8	Section 80ZA(b)(vi)—	19
	<i>omit, insert—</i>	20
	(vi) if the adult is subject to a forensic order, treatment support order or treatment authority under the <i>Mental Health Act 2015</i> —the chief psychiatrist;	21 22 23 24 25
9	Section 80ZE(5)(a)—	26
	<i>omit, insert—</i>	27
	(a) if the guardian is aware the adult is subject to a forensic order, treatment support order	28 29

	or treatment authority under the <i>Mental Health Act 2015</i> —	1 2
	(i) the terms of the order or authority; and	3
	(ii) the views of the authorised psychiatrist responsible for treating the adult under that Act about the use of the restrictive practice;	4 5 6 7
10	Section 80ZE(5)(b)(i), ‘Mental Health Act 2000’—	8
	<i>omit, insert—</i>	9
	<i>Mental Health Act 2015</i>	10
11	Section 80ZH(3)(c)—	11
	<i>omit, insert—</i>	12
	(c) if the public guardian is aware the adult is subject to a forensic order, treatment support order or treatment authority under the <i>Mental Health Act 2015</i> —the authorised psychiatrist responsible for treating the adult under that Act;	13 14 15 16 17 18
12	Section 80ZP(f)—	19
	<i>omit, insert—</i>	20
	(f) if the adult is subject to a forensic order, treatment support order or treatment authority under the <i>Mental Health Act 2015</i> —the chief psychiatrist;	21 22 23 24
13	Section 80ZQ(e)—	25
	<i>omit, insert—</i>	26
	(e) if the adult is subject to a forensic order, treatment support order or treatment	27 28

	authority under the <i>Mental Health Act 2015</i> —the chief psychiatrist;	1 2
14	Section 80ZS(2)(b)(v)— <i>omit, insert—</i>	3 4
	(v) if the informal decision-maker is aware the adult is subject to a forensic order, treatment support order or treatment authority under the <i>Mental Health Act 2015</i> —the authorised psychiatrist responsible for treating the adult under that Act has been given an opportunity to participate in the development of the positive behaviour support plan; and	5 6 7 8 9 10 11 12 13
15	Section 118(1)(g)(iii)— <i>omit, insert—</i>	14 15
	(iii) if the tribunal is aware the adult is subject to a forensic order, treatment support order or treatment authority under the <i>Mental Health Act 2015</i> —the chief psychiatrist; and	16 17 18 19 20
16	Schedule 2, section 5(3)— <i>insert—</i>	21 22
	(d) psychosurgery for the adult.	23
17	Schedule 2, section 7(e), ‘psychosurgery’— <i>omit, insert—</i>	24 25
	a non-ablative neurosurgical procedure	26
18	Schedule 2, section 15— <i>omit, insert—</i>	27 28

15	Psychosurgery	1
	<i>Psychosurgery</i> is a procedure on the brain, that involves deliberate damage to or removal of brain tissue, for the treatment of a mental illness.	2 3 4
	15A Non-ablative neurosurgical procedure	5
	A <i>non-ablative neurosurgical procedure</i> is a procedure on the brain, that does not involve deliberate damage to or removal of brain tissue, for the treatment of a mental illness.	6 7 8 9
19	Schedule 4, definition <i>director of mental health</i>— <i>omit.</i>	10 11
20	Schedule 4— <i>insert—</i>	12 13
	<i>chief psychiatrist</i> see the <i>Mental Health Act 2015</i> , schedule 3.	14 15
	<i>non-ablative neurosurgical procedure</i> see schedule 2, section 15A.	16 17
	Hospital and Health Boards Act 2011	18
1	Particular references to director of mental health	19
	Each of the following provisions is amended by omitting ‘director of mental health’ and inserting ‘chief psychiatrist’—	20 21
	• section 111, heading and subsection (2)	22
	• section 139, definition <i>designated person</i> , paragraph (d)	23
2	Section 111(3), definition <i>authorised mental health service</i>— <i>omit, insert—</i>	24 25 26

	<i>authorised mental health service</i> see the <i>Mental Health Act 2015</i> , schedule 3.	1 2
3	Schedule 2, definition <i>director of mental health</i>— <i>omit.</i>	3 4
4	Schedule 2— <i>insert—</i>	5 6
	<i>chief psychiatrist</i> see the <i>Mental Health Act 2015</i> , schedule 3.	7 8
	Limitation of Actions Act 1974	9
1	Section 5(3)(a), ‘<i>Mental Health Act 2000</i>’— <i>omit, insert—</i> <i>Mental Health Act 2015</i>	10 11 12
2	Section 5(3)(c), ‘in strict custody pursuant to an order of the court or in safe custody pursuant to’— <i>omit, insert—</i> detained in an authorised mental health service under an order of the court or in safe custody under	13 14 15 16 17
	Penalties and Sentences Act 1992	18
1	Section 163(3)(a), ‘<i>Mental Health Act 2000</i>, chapter 7, part 6’— <i>omit, insert—</i> <i>Mental Health Act 2015</i> , chapter 5, part 3	19 20 21 22

Police Powers and Responsibilities Act 2000		1
1	Section 12(1), example—	2
	<i>omit, insert—</i>	3
	<i>Example—</i>	4
	A police officer who has entered a place under section	5
	609 may, under the <i>Public Health Act 2005</i> , section	6
	157B, take a person to a treatment or care place within	7
	the meaning of chapter 4A of that Act.	8
2	Schedule 1, entry for Mental Health Act 2000—	9
	<i>omit, insert—</i>	10
	<i>Mental Health Act 2015</i>	11
3	Schedule 1—	12
	<i>insert—</i>	13
	<i>Public Health Act 2005</i> , chapter 4A	14
Public Guardian Act 2014		15
1	Section 39, definitions <i>consumer</i> and <i>visitable site</i>, 'Mental Health Act 2000'—	16
	<i>omit, insert—</i>	17
	<i>Mental Health Act 2015</i>	18
2	Section 47(4)(c)—	19
	<i>omit, insert—</i>	20
	(c) the chief psychiatrist under the <i>Mental</i>	21
	<i>Health Act 2015</i> ;	22
		23

Schedule 4

3	Section 51, definition <i>authorised mental health service</i>, ‘<i>Mental Health Act 2000</i>, schedule’—	1 2
	<i>omit, insert—</i>	3
	<i>Mental Health Act 2015</i> , schedule 3	4
4	Section 70(4)(f)—	5
	<i>renumber as section 70(4)(g).</i>	6
5	Section 70(4)—	7
	<i>insert—</i>	8
	(f) the chief psychiatrist under the <i>Mental Health Act 2015</i> ;	9 10
	Public Service Act 2008	11
1	Schedule 1, entry for Mental Health Review Tribunal, ‘<i>Mental Health Act 2000</i>’—	12 13
	<i>omit, insert—</i>	14
	<i>Mental Health Act 2015</i>	15
	Residential Services (Accreditation) Act 2002	16
1	Section 4(5)(b), ‘<i>Mental Health Act 2000</i>’—	17
	<i>omit, insert—</i>	18
	<i>Mental Health Act 2015</i>	19

Residential Tenancies and Rooming Accommodation Act 2008		1 2
1	Section 44(1)(c), ‘Mental Health Act 2000’— <i>omit, insert—</i> <i>Mental Health Act 2015</i>	3 4 5
Statutory Instruments Act 1992		6
1	Schedule 2A, ‘Mental Health Act 2000’— <i>omit, insert—</i> <i>Mental Health Act 2015</i>	7 8 9
Terrorism (Preventative Detention) Act 2005		10
1	Section 62(1)(c), ‘Mental Health Act 2000’— <i>omit, insert—</i> <i>Mental Health Act 2015</i>	11 12 13
Victims of Crime Assistance Act 2009		14
1	Section 15(1), note, ‘condition’— <i>omit, insert—</i> state	15 16 17
2	Section 15(1), note, ‘Mental Health Act 2000, see section 284’— <i>omit, insert—</i> <i>Mental Health Act 2015, see section 162</i>	18 19 20 21

3	Section 16(2), note, paragraph (b)—	1
	<i>omit, insert—</i>	2
	(b) the <i>Mental Health Act 2015</i> , chapter 10, part 6.	3

Weapons Act 1990 4

1	Section 53(7), definition <i>excluded person</i>, paragraph (f), ‘<i>Mental Health Act 2000</i> or a similar order under the <i>Mental Health Act 1974</i>’—	5
	<i>omit, insert—</i>	6
	<i>Mental Health Act 2015</i> or a similar order under the repealed <i>Mental Health Act 2000</i>	7
		8
		9
		10

Working with Children (Risk Management and Screening) Act 2000 11

12

1	Section 329(2)(a)(i), ‘condition’—	13
	<i>omit, insert—</i>	14
	state	15

2	Section 332(1)(b), ‘condition’—	16
	<i>omit, insert—</i>	17
	state	18

3	Section 332(5)(a), ‘<i>Mental Health Act 2000</i>, section 284’—	19
	<i>omit, insert—</i>	20
	<i>Mental Health Act 2015</i> , section 163	21

4	Section 332(9)(a), ‘<i>Mental Health Act 2000</i>, section 426’—	22
	<i>omit, insert—</i>	23

	<i>Mental Health Act 2015</i> , section 694	1
5	Section 332(9)(b), ‘Mental Health Act 2000, section 318’—	2
	<i>omit, insert—</i>	3
	<i>Mental Health Act 2015</i> , section 160	4
6	Section 332(10), ‘Mental Health Act 2000, section 318(2)’—	5
	<i>omit, insert—</i>	6
	<i>Mental Health Act 2015</i> , section 160(2)	7
7	Section 333(1)(b), ‘the person’s mental condition under the Mental Health Act 2000, chapter 6, part 3 or 4’—	9
	<i>omit, insert—</i>	10
	a forensic order to which the person is subject, or the person’s fitness for trial, under the <i>Mental Health Act 2015</i> , chapter 12, part 3, 4 or 6	11
		12
		13
		14
8	Section 333(2)(c), ‘under the Mental Health Act 2000, section 203A’—	15
	<i>omit, insert—</i>	16
	or other person mentioned in the <i>Mental Health Act 2015</i> , section 452	17
		18
		19
9	Section 333(5)(a), ‘Mental Health Act 2000, section 464’—	20
	<i>omit, insert—</i>	21
	<i>Mental Health Act 2015</i> , section 155 or 740	22
10	Section 333(9), ‘Mental Health Act 2000, section 458’—	23
	<i>omit, insert—</i>	24
	<i>Mental Health Act 2015</i> , section 720	25

11	Section 337(1)(b), ‘condition’—	1
	<i>omit, insert—</i>	2
	state	3
12	Section 337(4)(a), ‘Mental Health Act 2000, section 284’—	4
	<i>omit, insert—</i>	5
	<i>Mental Health Act 2015, section 163</i>	6
13	Section 337(4)(c), ‘Mental Health Act 2000, section 426’—	7
	<i>omit, insert—</i>	8
	<i>Mental Health Act 2015, section 694</i>	9
14	Section 337(7), ‘Mental Health Act 2000, section 318’—	10
	<i>omit, insert—</i>	11
	<i>Mental Health Act 2015, section 160</i>	12
15	Section 337(8), ‘Mental Health Act 2000, section 318(2)’—	13
	<i>omit, insert—</i>	14
	<i>Mental Health Act 2015, section 160(2)</i>	15
16	Section 338(1)(b), ‘the person’s mental condition under the Mental Health Act 2000, chapter 6, part 3 or 4’—	16
	<i>omit, insert—</i>	17
	a forensic order to which the person is subject, or the	19
	person’s fitness for trial, under the <i>Mental Health Act</i>	20
	<i>2015, chapter 12, part 3, 4 or 6</i>	21
17	Section 338(2)(c), ‘under the Mental Health Act 2000, section 203A’—	22
	<i>omit, insert—</i>	23
		24

	or other person mentioned in the <i>Mental Health Act 2015</i> , section 452	1 2
18	Section 338(4)(a), ‘Mental Health Act 2000, section 464’— <i>omit, insert—</i> <i>Mental Health Act 2015</i> , section 155 or 740	3 4 5
19	Section 338(4)(c), ‘Mental Health Act 2000, section 458’— <i>omit, insert—</i> <i>Mental Health Act 2015</i> , section 720	6 7 8
	Youth Justice Act 1992	9
1	Particular references to Mental Health Act 2000 Each of the following provisions is amended by omitting ‘ <i>Mental Health Act 2000</i> ’ and inserting ‘ <i>Mental Health Act 2015</i> ’—	10 11 12 13
	• section 61 and heading	14
	• section 264, heading and subsection (1)	15